

disapprove or take other action with respect to that adverse recommendation within 30 days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General shall so advise the petitioner and close the case.

§1.9 Delegation of authority.

The Attorney General may delegate to any officer of the Department of Justice any of his or her duties or responsibilities under §§1.1 through 1.8.

§1.10 Advisory nature of regulations.

The regulations contained in this part are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for executive clemency, nor do they restrict the authority granted to the President under Article II, section 2 of the Constitution.

PART 2—PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

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- 2.67 Expedited Revocation Procedure.

AUTHORITY: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

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SOURCE: 42 FR 39809, Aug. 5, 1977, unless otherwise noted.

§ 2.1 Definitions.

As used in this part:

(a) The term *Commission* refers to the U.S. Parole Commission.

(b) The term *Commissioner* refers to members of the U.S. Parole Commission.

(c) The term *National Appeals Board* refers to the three-member Commission sitting as a body to decide appeals taken from decisions of a Regional Commissioner, who participates as a member of the National Appeals Board. The Vice Chairman shall be Chairman of the National Appeals Board.

(d) The term *National Commissioners* refers to the Chairman of the Commission and to the Commissioner who is not serving as the Regional Commissioner in respect to a particular case.

(e) The term *Regional Commissioner* refers to Commissioners who are assigned to make initial decisions, pursuant to the authority delegated by these rules, in respect to prisoners and parolees in regions defined by the Commission.

(f) The term *eligible prisoner* refers to any Federal prisoner eligible for parole pursuant to this part and includes any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole.

(g) The term *parolee* refers to any Federal prisoner released on parole or as if on parole pursuant to 18 U.S.C. 4164 or 4205(f). The term *mandatory release* refers to release pursuant to 18 U.S.C. 4163 and 4164.

(h) The term *effective date of parole* refers to a parole date that has been approved following an in-person hearing held within nine months of such date, or following a pre-release record review.

(i) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms as used in chapter 311 of part IV of title 18 of the U.S. Code or 28 CFR chapter I, part 0, subpart V.

[42 FR 39809, Aug. 5, 1977, as amended at 43 FR 22707, May 26, 1978; Order No. 960-81, 46 FR 52354, Oct. 27, 1981; 60 FR 51350, Oct. 2, 1995; 61 FR 55743, Oct. 29, 1996]

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§ 2.2 Eligibility for parole; adult sentences.

(a) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205 (a) (or pursuant to former 18 U.S.C. 4202) may be released on parole in the discretion of the Commission after completion of one-third of such term or terms, or after completion of ten years of a life sentence or of a sentence of over thirty years.

(b) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(b)(1) (or pursuant to former 18 U.S.C. 4208(a)(1)) may be released on parole in the discretion of the Commission after completion of the court-designated minimum term, which may be less than but not more than one-third of the maximum sentence imposed.

(c) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(b)(2) (or pursuant to former 18 U.S.C. 4208(a)(2)) may be released on parole at any time in the discretion of the Commission.

(d) If the Court has imposed a maximum term or terms of more than one year pursuant to 18 U.S.C. 924(a) or 26 U.S.C. 5871 [violation of Federal gun control laws], a Federal prisoner serving such term or terms may be released in the discretion of the Commission as if sentenced pursuant to 18 U.S.C. 4205(b)(2). However, if the prisoner's offense was committed on or after October 12, 1984, and the Court imposes a term or terms under 26 U.S.C. 5871, the prisoner is eligible for parole only after service of one-third of such term or terms, pursuant to 18 U.S.C. 4205(a).

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission.

[42 FR 41408, Aug. 17, 1977, as amended at 50 FR 36423, Sept. 6, 1985; 53 FR 46870, Nov. 21, 1988]

§ 2.3 Same: Narcotic Addict Rehabilitation Act.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act

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may be released on parole in the discretion of the Commission after completion of at least six months in treatment, not including any period of time for “study” prior to final judgment of the court. Before parole is ordered by the Commission, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative must also report to the Commission whether the prisoner should be released. Recertification by the Surgeon General prior to reparole consideration is not required (18 U.S.C. 4254).

[48 FR 22918, May 23, 1983]

§ 2.4 Same: Youth offenders and juvenile delinquents.

Committed youth offenders and juvenile delinquents may be released on parole at any time in the discretion of the Commission.

(18 U.S.C. 5017(a) and 5041)

[45 FR 44925, July 2, 1980]

§ 2.5 Sentence aggregation.

When multiple sentences are aggregated by the Bureau of Prisons pursuant to 18 U.S.C. 4161 and 4205, such sentences are treated as a single aggregate sentence for the purpose of every action taken by the Commission pursuant to these rules, and the prisoner has a single parole eligibility date as determined by the Bureau of Prisons.

[45 FR 44925, July 2, 1980]

§ 2.6 Withheld and forfeited good time.

While neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from receiving a parole hearing, section 4206 of title 18 of the U.S. Code permits the Commission to parole only those prisoners who have substantially observed the rules of the institution.

[43 FR 38822, Aug. 31, 1978]

§ 2.7 Committed fines and restitution orders.

(a) *Committed fines.* In any case in which a prisoner shall have had a fine imposed upon him by the committing

court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until payment of the fine, or until the fine commitment order is discharged according to law under the regulations of the Bureau of Prisons. Discharge from the commitment obligation of any committed fine does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

(b) *Restitution orders.* Where a prisoner applying for parole is under an order of restitution, and it appears that the prisoner has the ability to pay and has willfully failed to do so, the Commission shall require that approval of a parole release plan be contingent upon the prisoner first satisfying such restitution order. The prisoner shall be notified that failure to satisfy this condition shall result in retardation of parole under the provisions of § 2.28(e).

[48 FR 44527, Sept. 29, 1983, as amended at 50 FR 36422, Sept. 6, 1985]

§ 2.8 Mental competency proceedings.

(a) Whenever a prisoner (or parolee) is scheduled for a hearing in accordance with the provisions of this part and reasonable doubt exists as to his mental competency, i.e., his ability to understand the nature of and participate in scheduled proceedings, a preliminary inquiry to determine his mental competency shall be conducted by the hearing panel, hearing examiner or other official (including a U.S. Probation Officer) designated by the Regional Commissioner.

(b) The hearing examiner(s) or designated official shall receive oral or written psychiatric or psychological testimony and other evidence that may be available. A preliminary determination of mental competency shall be made upon the testimony, evidence, and personal observation of the prisoner (or parolee). If the examiner(s) or designated official determines that the prisoner is mentally competent, the previously scheduled hearing shall be held. If they determine that the prisoner is not mentally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiner(s) or designated official determine that a prisoner is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review. If the Regional Commissioner concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner has recovered sufficiently to understand the nature of and participate in the proceedings, and in the case of a parolee may order such parolee transferred to a Bureau of Prisons facility for further examination. In any such case, the Regional Commissioner shall require a progress report on the mental health of the prisoner at least every 6 months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest feasible date.

(d) If the Regional Commissioner disagrees with the findings of the hearing examiner(s) or designated official as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

[44 FR 3408, Jan. 16, 1979]

§ 2.9 Study prior to sentencing.

When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. 4205(c), the report to the sentencing court is prepared and submitted directly by the U.S. Federal Prison System.

[50 FR 36423, Sept. 6, 1985]

§ 2.10 Date service of sentence commences.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: *Provided, however*, That any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) The imposition of a sentence of imprisonment for civil contempt shall interrupt the running of any sentence of imprisonment being served at the time the sentence of civil contempt is imposed, and the sentence or sentences so interrupted shall not commence to run again until the sentence of civil contempt is lifted.

(c) Service of the sentence of a committed youth offender or person committed under the Narcotic Addict Rehabilitation Act commences to run from the date of conviction and is interrupted only when such prisoner or parolee:

- (1) Is on court-ordered bail;
- (2) Is in escape status;
- (3) Has absconded from parole supervision; or
- (4) Comes within the provisions of paragraph (b) of this section.

[42 FR 39809, Aug. 5, 1977, as amended at 47 FR 36634, Aug. 23, 1982]

§ 2.11 Application for parole; notice of hearing.

(a) A federal prisoner (including a committed youth offender or prisoner sentenced under the Narcotic Addict Rehabilitation Act) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each federal institution and shall be provided to each prisoner who is eligible for an initial parole hearing pursuant to § 2.12. Prisoners committed under the Federal Juvenile Delinquency Act shall be considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 60 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who declines either to apply for or waive parole consideration is deemed to have waived parole consideration.

(d) In addition to the above procedures relating to parole application, all prisoners prior to initial hearing shall be provided with an inmate background statement by the Bureau of Prisons for completion by the prisoner.

(e) At least sixty days prior to the initial hearing (and prior to any hearing conducted pursuant to § 2.14), the prisoner shall be provided with written notice of the time and place of the hearing and of his right to review the documents to be considered by the Commission, as provided by § 2.55. A prisoner may waive such notice, except that if such notice is not waived, the case shall be continued to the time of the next regularly scheduled proceeding of the Commission at the institution in which the prisoner is confined.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 6381, Jan. 28, 1980; 47 FR 21041, May 17, 1982; 49 FR 7228, Feb. 28, 1984]

§ 2.12 Initial hearings: Setting presumptive release dates.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a federal institution or as soon thereafter as practicable; except that in a case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing will be conducted nine months prior to the completion of such a minimum term, or as soon thereafter as practicable.

(b) Following initial hearing, the Commission shall (1) set a presumptive release date (either by parole or by mandatory release) within fifteen years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a fifteen year reconsideration hearing pursuant to § 2.14(c).

(c) Notwithstanding the above paragraph, a prisoner may not be paroled earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law.

(d) A presumptive parole date shall be contingent upon an affirmative finding by the Commission that the prisoner has a continued record of good conduct and a suitable release plan and shall be subject to the provisions of §§ 2.14 and 2.28. In the case of a prisoner sentenced under the Narcotic Addict

Rehabilitation Act, 18 U.S.C. 4254, a presumptive parole date shall also be contingent upon certification by the Surgeon General pursuant to § 2.3 of these rules. Consideration of disciplinary infractions in cases with presumptive parole dates may be deferred until the commencement of the next in-person hearing or the prerelease record review required by § 2.14(b). While prisoners are encouraged to earn the restoration of forfeited or withheld good time, the Commission will consider the prisoner's overall institutional record in determining whether the conditions of a presumptive parole date have been satisfied.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3405, 3407, Jan. 16, 1979; 48 FR 22919, May 23, 1983; 49 FR 34208, Aug. 29, 1984; 57 FR 41391, Sept. 10, 1992; 60 FR 51350, Oct. 2, 1995]

§ 2.13 Initial hearing; procedure.

(a) An initial hearing shall be conducted by a single hearing examiner unless the Regional Commissioner orders that the hearing be conducted by a panel of two examiners. The examiner shall discuss with the prisoner his offense severity rating and salient factor score as described in § 2.20, his institutional conduct and, in addition, any other matter the examiner may deem relevant.

(b) A prisoner may be represented at a hearing by a person of his or her choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner, and to provide such additional information as the examiner shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(c) At the conclusion of the hearing, the examiner shall discuss the decision to be recommended by the examiner, and the reasons therefor, except in the extraordinary circumstance of a complex issue that requires further deliberation before a recommendation can be made.

(d) In accordance with 18 U.S.C. 4206, the reasons for establishment of a release date shall include a guidelines evaluation statement containing the

prisoner's offense severity rating and salient factor score (including the points credited on each item of such score) as described in § 2.20, as well as the specific factors and information relied upon for any decision outside the range indicated by the guidelines.

(e) No interviews with the Commission, or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Commission procedures. Hearings shall not be open to the public.

(f) A full and complete record of every hearing shall be retained by the Commission. Upon a request, pursuant to § 2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 6381, Jan. 28, 1980; 47 FR 25736, June 15, 1982; 48 FR 23183, May 24, 1983; 59 FR 45625, Sept. 2, 1994]

§ 2.14 Subsequent proceedings.

(a) *Interim proceedings.* The purpose of an interim hearing required by 18 U.S.C. 4208(h) shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(1) Notwithstanding a previously ordered presumptive release date or fifteen year reconsideration hearing, interim hearings shall be conducted by an examiner panel pursuant to the procedures of § 2.13(b), (c), (e), and (f) at the following intervals from the date of the last hearing:

(i) In the case of a prisoner with a maximum term or terms of less than seven years, every eighteen months (until released);

(ii) In the case of a prisoner with a maximum term or terms of seven years or more, every twenty-four months (until released); *Provided That*, in the case of a prisoner whose presumptive parole date exceeds the minimum term by no more than nine months, and where at least twenty-four months has elapsed since the initial hearing, such prisoner shall be entitled to an interim hearing nine months preceding the month of parole eligibility.

(iii) In the case of a prisoner with an unsatisfied minimum term, other than described under paragraph (a)(1)(ii) of this section, the first interim hearing shall be deferred until the docket of hearings immediately preceding the month of parole eligibility.

(2) Following an interim hearing, the Commission may:

(i) Order no change in the previous decision;

(ii) Advance a presumptive release date, or the date of a fifteen year reconsideration hearing. However, it shall be the policy of the Commission that once set, a presumptive release date or the date of a fifteen year reconsideration hearing shall be advanced only:

(1) For superior program achievement under the provisions of § 2.60; or

(2) For other clearly exceptional circumstances.

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infractions. In a case in which disciplinary infractions have occurred, the interim hearing shall be conducted in accordance with the procedures of § 2.34(c) through (f). (Prior to each interim hearing, prisoners shall be notified on the progress report furnished by the Federal Prison System that any finding of misconduct by an Institutional Disciplinary Committee since the previous hearing will be considered for possible action under this paragraph);

(iv) If a presumptive date falls within nine months after the date of an interim hearing, the Commission may treat the interim hearing as a pre-release review in lieu of the record review required by paragraph (b) of this section.

(b) *Pre-release reviews.* The purpose of a pre-release review shall be to determine whether the conditions of a presumptive release date by parole have been satisfied.

(1) At least sixty days prior to a presumptive parole date, the case shall be reviewed on the record, including a current institutional progress report.

(2) Following review, the Regional Commissioner may:

(i) Approve the parole date;

(ii) Advance or retard the parole date for purpose of release planning as provided by § 2.28(e);

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(iii) Retard the parole date or commence rescission proceedings as provided by § 2.34;

(iv) Advance the parole date for superior program achievement under the provisions of § 2.60.

(3) A pre-release review pursuant to this section shall not be required if an in-person hearing has been held within nine months of the parole date.

(4) Where:

(i) There has been no finding of misconduct by an Institutional Disciplinary Committee nor any allegation of criminal conduct since the last hearing; and

(ii) No other modification of the release date appears warranted, the administrative hearing examiner may act for the Regional Commissioner under paragraph (b)(2) of this section to approve conversion of the presumptive parole date to an effective date of parole.

(c) *Fifteen year reconsideration hearings.* A fifteen year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures at § 2.13.

(1) A fifteen year reconsideration hearing shall be ordered following initial hearing in any case in which a release date is not set.

(2) Following a fifteen year reconsideration hearing, the Commission may take any one of the actions authorized by § 2.12(b).

[46 FR 39136, July 31, 1981; 47 FR 25735, June 15, 1982, as amended at 48 FR 9247, Mar. 4, 1983; 48 FR 44525, Sept. 29, 1983; 49 FR 34208, Aug. 29, 1984; 55 FR 290, Jan. 4, 1990; 60 FR 51350, Oct. 2, 1995]

§ 2.15 Petition for consideration of parole prior to date set at hearing.

When a prisoner has served the minimum term of imprisonment required by law, the Bureau of Prisons may petition the responsible Regional Commissioner for reopening the case under § 2.28(a) and consideration for parole prior to the date set by the Commission at the initial or review hearing. The petition must show cause why it should be granted, i.e., an emergency, hardship, or the existence of other ex-

traordinary circumstances that would warrant consideration of early parole.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3407, Jan. 16, 1979]

§ 2.16 Parole of prisoner in state, local, or territorial institution.

(a) Any person who is serving a sentence of imprisonment for any offense against the United States, but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Commission on the same terms and conditions, by the same authority, and subject to recommittal for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, parole consideration shall be made by an examiner panel of the appropriate region on the record only. If such prisoner is released from his state sentence prior to a Federal grant of parole, he shall be given a personal hearing as soon as feasible after receipt at a Federal institution.

(c) Prisoners who are serving Federal sentences exclusively but who are being boarded in State, local, or territorial institutions may be provided hearings at such facilities or may be transferred by the Bureau of Prisons to Federal Institutions for hearings by examiner panels of the Commission.

(18 U.S.C. 4203, 4204)

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 44924, July 2, 1980; 50 FR 36424, Sept. 6, 1985]

§ 2.17 Original jurisdiction cases.

(a) Following any hearing conducted pursuant to these rules, a Regional Commissioner may designate certain cases for decision by a majority of the Commission, as original jurisdiction cases. In such instances, he shall forward the case with his vote, and any additional comments he may deem germane, to the National Commissioners

for decision. Decisions shall be based upon the concurrence of two votes, with the Regional Commissioner and the National Commissioners each having one vote.

(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior:

(i) Involved an unusual degree of sophistication or planning, or

(ii) Was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim.

(4) *Long-term sentences.* Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

(c)(1) Any case designated for the original jurisdiction of the Commission shall remain an original jurisdiction case unless designation is removed pursuant to this subsection.

(2) A case found to be inappropriately designated for the Commission's original jurisdiction, or to no longer warrant such designation, may be removed from original jurisdiction under the procedures specified in paragraph (a) of this section following a regularly scheduled hearing or the reopening of the case pursuant to § 2.28. Removal from original jurisdiction may also occur by majority vote of the Commission considering a petition for reconsideration pursuant to § 2.27. Where the circumstances warrant, a case may be redesignated as original jurisdiction pursuant to the provisions of paragraphs (a) and (b) of this section.

[42 FR 39809, Aug. 5, 1977, as amended at 42 FR 44234, Sept. 2, 1977; 48 FR 53409, Nov. 28, 1983; 61 FR 13763, Mar. 28, 1996; 61 FR 55743, Oct. 29, 1996]

§ 2.18 Granting of parole.

The granting of parole to an eligible prisoner rests in the discretion of the U.S. Parole Commission. As pre-

requisites to a grant of parole, the Commission must determine that the prisoner has substantially observed the rules of the institution or institutions in which he has been confined; and upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, must determine that release would not depreciate the seriousness of his offense or promote disrespect for the law, and that release would not jeopardize the public welfare (i.e., that there is a reasonable probability that, if released, the prisoner would live and remain at liberty without violating the law or the conditions of his parole).

§ 2.19 Information considered.

(a) In making a parole or reparole determination the Commission shall consider, if available and relevant:

(1) Reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) Official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) Pre-sentence investigation reports;

(4) Recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge and prosecuting attorney;

(5) Reports of physical, mental, or psychiatric examination of the offender; and

(6) A statement, which may be presented orally or otherwise, by any victim of the offense for which the prisoner is imprisoned about the financial, social, psychological, and emotional harm done to, or loss suffered by such victim.

(b)(1) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.

(2) To permit adequate review of information concerning the prisoner, materials submitted to the Commission should be received by the Commission no later than the first day of the

month preceding the month of the scheduled hearing docket.

(3) If material of more than six (6), double-spaced, letter-sized pages is first submitted at the time of the hearing (or preliminary interview) and the hearing panel (or person conducting the hearing or preliminary interview) concludes that it is not feasible to read all the material at that time, the person submitting the material will be permitted to summarize it briefly at the hearing (or preliminary interview). All of the material submitted will become part of the record to be considered by the Commission in its review of the proceedings.

(4) The Commission will normally consider only verbal and written evidence at hearings. Recorded audio and visual material will be reviewed at hearings only if there is no adequate substitute to permit a finding under paragraph (c) of this section. Otherwise, recorded audio and visual material should be submitted prior to the hearing for review and summarization, pursuant to paragraph (b)(2) of this section.

(c) The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. If the Commission is given evidence of criminal behavior that has been the subject of an acquittal in a federal, state, or local court, the Commission may consider that evidence if:

(1) The Commission finds that it cannot adequately determine the prisoner's suitability for release on parole, or to remain on parole, unless the evidence is taken into account;

(2) The Commission is satisfied that the record before it is adequate notwithstanding the acquittal;

(3) The prisoner has been given the opportunity to respond to the evidence before the Commission; and

(4) The evidence before the Commission meets the preponderance standard.

In any other case, the Commission shall defer to the trial jury. Offense behavior in Category 5 or above shall presumptively support a finding under paragraph (c)(1) of this section.

(d) Recommendations and information from sentencing judges, defense attorneys, prosecutors, and other interested parties are welcomed by the Commission. In evaluating a recommendation concerning parole, the Commission must consider the degree to which such recommendation provides the Commission with specific facts and reasoning relevant to the statutory criteria for parole (18 U.S.C. 4206) and the application of the Commission's guidelines (including reasons for departure therefrom). Thus, to be most helpful, a recommendation should state its underlying factual basis and reasoning. However, no recommendation (including a prosecutorial recommendation pursuant to a plea agreement) may be considered as binding upon the Commission's discretionary authority to grant or deny parole.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 26550, May 4, 1979; 44 FR 27658, May 11, 1979; 44 FR 31638, June 1, 1979; 49 FR 34207, Aug. 29, 1984; 49 FR 44098, Nov. 2, 1984; 50 FR 36423, Sept. 6, 1985; 51 FR 7064, Feb. 28, 1986; 56 FR 16270, Apr. 22, 1991; 56 FR 30868, July 8, 1991; 58 FR 16612, Mar. 30, 1993]

§ 2.20 Paroling policy guidelines: Statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the U.S. Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

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(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain instructions for the rating of certain offense behaviors. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a “salient factor score” serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at § 2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(h) If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.

(i) For criminal behavior committed while in confinement see § 2.36 (Rescission Guidelines).

(j)(1) In probation revocation cases, the original federal offense behavior and any new criminal conduct on probation (federal or otherwise) is considered in assessing offense severity. The original federal conviction is also counted in the salient factor score as a prior conviction. Credit is given toward the guidelines for any time spent in confinement on any offense considered in assessing offense severity.

(2) Exception: Where probation has been revoked on a complex sentence (i.e., a committed sentence of more than six months on one count or more of an indictment or information followed by a probation term on other count(s) of an indictment or information), the case shall be considered for guideline purposes under § 2.21 as if parole rather than probation had been revoked.

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GUIDELINES FOR DECISIONMAKING

[Guidelines for decisionmaking, customary total time to be served before release (including jail time)]

Offense characteristics: Severity of offense behavior	Offender characteristics: Parole prognosis (salient factor score 1981)			
	Very good (10 to 8)	Good (7 to 6)	Fair (5 to 4)	Poor (3 to 0)
Guideline range (months)				
Category:				
1	≤4	≤8	8–12	12–16
2	≤6	≤10	12–16	16–22
3	≤10	12–16	18–24	24–32
4	12–18	20–26	26–34	34–44
5	24–36	36–48	48–60	60–72
6	40–52	52–64	64–78	78–100
7	52–80	64–92	78–110	100–148
8 ¹	100+	120+	150+	180+

¹Note: For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category by more than 48 months, the Commission will specify the pertinent case factors upon which it relied in reaching its decision, which may include the absence of any factors mitigating the offense. This procedure is intended to ensure that the prisoner understands that individualized consideration has been given to the facts of the case, and not to suggest that a grant of parole is to be presumed for any class of Category Eight offenders. However, a murder committed to silence a victim or witness, a contract murder, a murder by torture, the murder of a law enforcement officer to carry out an offense, or a murder committed to further the aims of an on-going criminal operation, shall not justify a grant of parole at any point in the prisoner's sentence unless there are compelling circumstances in mitigation (e.g., a youthful offender who participated in a murder planned and executed by his parent). Such aggravated crimes are considered, by definition, at the extreme high end of Category Eight offenses. For these cases, the expiration of the sentence is deemed to be a decision at the maximum limit of the guideline range. (The fact that an offense does not fall under the definition contained herein does not mean that the Commission is obliged to grant a parole.)

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CHAPTER ONE OFFENSES OF GENERAL APPLICABILITY

101 *Conspiracy*

Grade conspiracy in the same category as the underlying offense.

102 *Attempt*

Grade attempt in the same category as the offense attempted.

103 *Aiding and Abetting*

Grade aiding and abetting in the same category as the underlying offense.

104 *Accessory After the Fact*

Grade accessory after the fact as two categories below the underlying offense, but not less than Category One.

105 *Solicitation to Commit a Crime of Violence*

Grade solicitation to commit a crime of violence in the same category as the underlying offense if the crime solicited would be graded as Category Eight. In all other cases grade solicitation to commit a crime of violence one category below the underlying offense, but not less than Category One.

NOTE TO CHAPTER ONE: The reasons for a conspiracy or attempt not being completed may, where the circumstances warrant, be considered as a mitigating factor (e.g., where there is voluntary withdrawal by the offender prior to completion of the offense).

CHAPTER TWO OFFENSES INVOLVING THE PERSON

SUBCHAPTER A—HOMICIDE OFFENSES

201 *Murder*

Murder, or a forcible felony* resulting in the death of a person other than a participating offender, shall be graded as Category Eight.

202 *Voluntary Manslaughter*

Category Seven.

203 *Involuntary Manslaughter*

Category Four.

SUBCHAPTER B—ASSAULT OFFENSES

211 *Assault During Commission of Another Offense*

(a) If serious bodily injury* results or if 'serious bodily injury is the result intended', grade as Category Seven;

(b) If bodily injury* results, or a weapon is fired by any offender, grade as Category Six;

(c) Otherwise, grade as Category Five.

212 *Assault*

(a) If serious bodily injury* results or if 'serious bodily injury is the result intended', grade as Category Seven;

(b) If bodily injury* results or a dangerous weapon is used by any offender, grade as Category Five;

(c) Otherwise, grade as Category Two;

(d) *Exception:* (1) If the victim was known to be a "protected person"* or law enforcement, judicial, or correctional official, grade conduct under (a) as Category Seven, (b) as Category six, and (c) as Category Three.

(2) If an assault is committed while resisting an arrest or detention initiated by a law enforcement officer or a civilian acting under color of law, grade conduct under (a)

*Terms marked by an asterisk are defined in Chapter Thirteen.

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as Category Seven, (b) as Category Six, and (c) as Category Three.

(e) *Exception:* If not for ransom or terrorism, and no bodily injury to victim, and limited duration (e.g., abducting the driver of a truck during a hijacking and releasing him unharmed within an hour), grade as Category Six.

213 *Firing a Weapon at a Structure Where Occupants are Physically Present*

Grade according to the underlying offense if one can be established, but not less than Category Five.

SUBCHAPTER C—KIDNAPING AND RELATED OFFENSES

221 *Kidnaping*

(a) If the purpose of the kidnaping is for ransom or terrorism, grade as Category Eight;

(b) If a person is held hostage in a known place for purposes of extortion (e.g., forcing a bank manager to drive to a bank to retrieve money by holding a family member hostage at home), grade as Category Seven;

(c) If a victim is used as a shield or hostage in a confrontation with law enforcement authorities, grade as Category Seven;

(d) Otherwise, grade as Category Seven.

(e) *Exception:* If not for ransom or terrorism, and no bodily injury to victim, and limited duration (e.g., abducting the driver of a truck during a hijacking and releasing him unharmed within an hour), grade as Category Six.

222 *Demand for Ransom*

(a) If a kidnaping has, in fact, occurred, but it is established that the offender was not acting in concert with the kidnapper(s), grade as Category Seven;

(b) If no kidnaping has occurred, grade as “extortion”.

SUBCHAPTER D—SEXUAL OFFENSES

231 *Rape or Forcible Sodomy*

(a) Category Seven.

(b) *Exception:* If a prior consensual sexual relationship between victim and offender is present, grade as Category Six.

232 *Carnal Knowledge* or Sodomy Involving Minors*

(a) Grade as Category Four, except as provided below.

(b) If the relationship is clearly consensual and the victim is at least fourteen years old, and the age difference between the victim and offender is less than four years, grade as Category One.

(c) If the victim is less than twelve years old, grade as Category Seven.

(d) If the offender is an adult who has abused a position of trust (e.g., teacher, counselor, or physician), or the offense involved predatory sexual behavior, grade as Category Seven. Sexual behavior is deemed predatory when the offender repeatedly uses

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any trick or other device to attract, lure, or bribe victims into the initial contact that results in the offense.

233 *Other Unlawful Sexual Conduct With Minors*

(a) Category Four

(b) *Exception:* If the victim is less than twelve years old grade as Category Six.

SUBCHAPTER E—OFFENSES INVOLVING AIRCRAFT

241 *Aircraft Piracy* Category Eight.

242 *Interference with a Flight Crew*

(a) If the conduct or attempted conduct has potential for creating a significant safety risk to an aircraft or passengers, grade as Category Seven.

(b) Otherwise, grade as Category Two.

SUBCHAPTER F—COMMUNICATION OF THREATS

251 *Communicating a Threat [to kill, assault, or kidnap]*

(a) Category Four;

(b) *Notes:*

(1) Any overt act committed for the purposes of carrying out a threat in this subchapter may be considered as an aggravating factor.

(2) If for purposes of extortion or obstruction of justice, grade according to Chapter Three, subchapter C, or Chapter Six, subchapter B, as applicable.

CHAPTER THREE OFFENSES INVOLVING PROPERTY

SUBCHAPTER A—ARSON AND OTHER PROPERTY DESTRUCTION OFFENSES

301 *Property Destruction by Fire or Explosives*

(a) If the conduct results in serious bodily injury* or if “serious bodily injury is the result intended”,* grade as Category Seven;

(b) If the conduct (i) involves any place where persons are present or likely to be present; or (ii) involves a residence, building, or other structure; or (iii) results in bodily injury*, grade as Category Six;

(c) Otherwise, grade as “property destruction other than listed above” but not less than Category Five.

302 *Wrecking a Train* Category Seven.

303 *Property Destruction Other Than Listed Above*

(a) If the conduct results in bodily injury,* or if “serious bodily injury is the result intended”,* grade as if “assault during commission of another offense”;

(b) If damage of more than \$5,000,000 is caused, grade as Category Seven;

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(c) If damage of more than \$1,000,000 but not more than \$5,000,000 is caused, grade as Category Six;

(d) If damage of more than \$200,000 but not more than \$1,000,000 is caused, grade as Category Five;

(e) If damage of at least \$40,000 but not more than \$200,000 is caused, grade as Category Four;

(f) If damage of at least \$2,000 but less than \$40,000 is caused, grade as Category Three;

(g) If damage of less than \$2,000 is caused, grade as Category One;

(h) *Exception:* If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

SUBCHAPTER B—CRIMINAL ENTRY OFFENSES

311 *Burglary or Unlawful Entry*

(a) If the conduct involves an armory or similar facility (e.g., a facility where automatic weapons or war materials are stored) for the purpose of theft or destruction of weapons or war materials, grade as Category Six;

(b) If the conduct involves an inhabited dwelling (whether or not a victim is present), or any premises with a hostile confrontation with a victim, grade as Category Five;

(c) If the conduct involves use of explosives or safecracking, grade as Category Five;

(d) Otherwise, grade as “theft” offense, but not less than Category Two.

(e) *Exception:* If the grade of the applicable “theft” offense exceeds the grade under this subchapter, grade as a “theft” offense.

SUBCHAPTER C—ROBBERY, EXTORTION, AND BLACKMAIL

321 *Robbery*

(a) Category Five.

(b) *Exceptions:*

(1) If the grade of the applicable “theft” offense exceeds the grade for robbery, grade as a “theft” offense.

(2) If any offender forces a victim to accompany any offender to a different location, or if a victim is forcibly detained by being tied, bound, or locked up, grade as Category Six.

(3) Pickpocketing (stealth—no force or fear), see subchapter D.

(c) *Note:* Grade purse snatching (fear or force) as robbery.

322 *Extortion*

(a) If by threat of physical injury to person or property, or extortionate extension of credit (loansharking), grade as Category Five;

(b) If by use of official governmental position, grade according to Chapter Six, subchapter C.

(c) If neither (a) nor (b) is applicable, grade under Chapter Eleven, subchapter F;

323 *Blackmail [threat to injure reputation or accuse of crime]*

Grade as a “theft” offense according to the value of the property demanded, but not less than Category Three. Actual damage to reputation may be considered as an aggravating factor.

Subchapter D—Theft and Related Offenses

331 *Theft, Forgery, Fraud, Trafficking in Stolen Property*, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses*

(a) If the value of the property* is more than \$5,000,000, grade as Category Seven;

(b) If the value of the property* is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

(c) If the value of the property* is more than \$200,000 but not more than \$1,000,000, grade as Category Five;

(d) If the value of the property* is at least \$40,000 but not more than \$200,000, grade as Category Four;

(e) If the value of the property* is at least \$2,000 but less than \$40,000, grade as Category Three;

(f) If the value of the property* is less than \$2,000, grade as Category One.

(g) *Exceptions:*

(1) Offenses involving stolen checks, credit cards, money orders or mail, forgery, fraud, interstate transportation of stolen or forged securities, trafficking in stolen property, or embezzlement shall be graded as not less than Category Two;

(2) Theft of an automobile shall be graded as no less than Category Three. Note: where the vehicle was recovered within 72 hours with no significant damage and the circumstances indicate that the only purpose of the theft was temporary use (e.g., joyriding), such circumstances may be considered as a mitigating factor.

(3) Grade obtaining drugs for own use by a fraudulent or fraudulently obtained prescription as Category Two.

(4) Grade manufacture, sale, and fraudulent use of credit cards as follows:

(i) Grade the manufacture, distribution or possession of counterfeit or altered credit cards as not less than Category Four.

(ii) Grade the distribution or possession of multiple stolen credit cards as not less than Category Three.

(iii) Grade the distribution or possession of a single stolen credit card as not less than Category Two.

(h) *Note:* In “theft” offenses, the total amount of the theft committed or attempted by the offender, or others acting in concert with the offender, is to be used.

*Terms marked by an asterisk are defined in Chapter Thirteen.

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(2) Grade fraudulent sale of drugs (e.g., sale of sugar as heroin) as ‘fraud’.

332 *Pickpocketing [stealth-no force or fear]*

Grade as a “theft” offense, but not less than Category Three.

333 *Fraudulent Loan Applications*

Grade as a “fraud” offense according to the amount of the loan.

334 *Preparation or Possession of Fraudulent Documents*

(a) If for purposes of committing another offense, grade according to the offense intended;

(b) Otherwise, grade as Category Two.

335 *Criminal Copyright Offenses*

(a) If very large scale (e.g., more than 100,000 sound recordings or more than 10,000 audio visual works), grade as Category Five;

(b) If large scale (e.g., 20,000–100,000 sound recordings or 2,000–10,000 audio visual works), grade as Category Four;

(c) If medium scale (e.g., 2,000–19,999 sound recordings or 200–1,999 audio visual works), grade as Category Three;

(d) If small scale (e.g., less than 2,000 sound recordings or less than 200 audio visual works), grade as Category Two.

Subchapter E—Counterfeiting and Related Offenses

341 *Passing or Possession of Counterfeit Currency or Other Medium of Exchange**

(a) If the face value of the currency or other medium of exchange is more than \$5,000,000, grade as Category Seven;

(b) If the face value of the currency or other medium of exchange is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

(c) If the face value is more than \$200,000 but not more than \$1,000,000, grade as Category Five;

(d) If the face value is at least \$40,000 but not more than \$200,000, grade as Category Four;

(e) If the face value is at least \$2,000 but less than \$40,000, grade as Category Three;

(f) If the face value is less than \$2,000, grade as Category Two.

342 *Manufacture of Counterfeit Currency or Other Medium of Exchange* or Possession of Instruments for Manufacture*

Grade manufacture or possession of instruments for manufacture (e.g., a printing press or plates) according to the quantity printed (see passing or possession), but not less than Category Five. The term *manufacture* refers to the capacity to print or generate multiple copies; it does not apply to pasting together parts of different notes.

Subchapter F—Bankruptcy Offenses

351 *Fraud in Bankruptcy or Concealing Property*

Grade as a “fraud” offense.

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Subchapter G—Violation of Securities or Investment Regulations and Antitrust Offenses

361 *Violation of Securities or Investment Regulations*

(a) If for purposes of fraud, grade according to the underlying offense;

(b) Otherwise, grade as Category Two.

362 *Antitrust Offenses*

(a) If estimated economic impact is more than one million dollars, grade as Category Four;

(b) If the estimated economic impact is more than \$100,000 but not more than one million dollars, grade as Category Three;

(c) Otherwise, grade as Category Two.

(d) *Note:* The term ‘economic impact’ refers to the estimated loss to any victims (e.g., loss to consumers from a price fixing offense).

363 *Insider Trading*

(a) If the estimated economic impact is more than \$5,000,000, grade as Category Seven;

(b) If the estimated economic impact is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

(c) If the estimated economic impact is more than \$200,000 but not more than \$1,000,000, grade as Category Five;

(d) If the estimated economic impact is at least \$40,000 but not more than \$200,000, grade as Category Four;

(e) If the estimated economic impact is at least \$2,000 but less than \$40,000, grade as Category Three;

(f) If the estimated economic impact is less than \$2,000, grade as Category Two.

(g) *NOTE:* The term ‘economic impact’ includes the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

CHAPTER FOUR OFFENSES INVOLVING IMMIGRATION, NATURALIZATION, AND PASSPORTS

401 *Unlawfully Entering the United States as an Alien*

Category One.

402 *Transportation of Unlawful Alien(s)*

(a) If the transportation of unlawful alien(s) involves detention and demand for payment, grade as Category Five;

(b) Otherwise, grade as Category Three.

403 *Offenses Involving Passports*

(a) If making an unlawful passport for distribution to another, possession with intent to distribute, or distribution of an unlawful passport, grade as Category Three;

(b) If fraudulently acquiring or improperly using a passport, grade as Category Two.

404 *Offenses Involving Naturalization or Citizenship Papers*

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(a) If forging or falsifying naturalization or citizenship papers for distribution to another, possession with intent to distribute, or distribution, grade as Category Three;

(b) If acquiring fraudulent naturalization or citizenship papers for own use or improper use of such papers, grade as Category Two;

(c) If failure to surrender canceled naturalization or citizenship certificate(s), grade as Category One.

CHAPTER FIVE OFFENSES INVOLVING REVENUE

Subchapter A—Internal Revenue Offenses

501 *Tax Evasion [income tax or other taxes]*

(a) If the amount of tax evaded or evasion attempted is more than \$5,000,000, grade as Category Seven;

(b) If the amount of tax evaded or evasion attempted is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

(c) If the amount of tax evaded or evasion attempted is more than \$200,000 but not more than \$1,000,000, grade as Category Five;

(d) If the amount of tax evaded or evasion attempted is at least \$40,000 but not more than \$200,000, grade as Category Four;

(e) If the amount of tax evaded or evasion attempted is at least \$2,000 but less than \$40,000, grade as Category Three;

(f) If the amount of tax evaded or evasion attempted is less than \$2,000, grade as Category One.

(g) *Notes:*

(1) Grade according to the amount of tax evaded or evasion attempted, not the gross amount of income.

(2) Tax evasion refers to failure to pay applicable taxes. Grade a false claim for a tax refund (where tax has not been withheld) as a “fraud” offense.

502 *Operation of an Unregistered Still*

Grade as a “tax evasion” offense.

Subchapter B—Customs Offenses

511 *Smuggling Goods into the United States*

(a) If the conduct is for the purpose of tax evasion, grade as a ‘tax evasion’ offense.

(b) If the article is prohibited from entry to the country absolutely (e.g., illicit drugs or weapons), use the grading applicable to possession with intent to distribute of such articles, or the grading applicable to tax evasion, whichever is higher, but not less than Category Two;

(c) If the conduct involves breaking seals, or altering or defacing customs marks, or concealing invoices, grade according to (a) or (b), as applicable, but not less than Category Two.

512 *Smuggling Goods into Foreign Countries in Violation of Foreign Law* (re: 18 U.S.C. 546) Category Two.

Subchapter C—Contraband Cigarettes

521 *Trafficking in Contraband Cigarettes* (re: 18 U.S.C. 2342)

Grade as a tax evasion offense.

CHAPTER SIX OFFENSES INVOLVING GOVERNMENTAL PROCESS

Subchapter A—Impersonation of Officials

601 *Impersonation of Official*

(a) If for purposes of commission of another offense, grade according to the offense attempted, but not less than Category Two;

(b) Otherwise, grade as Category Two.

Subchapter B—Obstructing Justice

611 *Perjury*

(a) If the perjured testimony concerns a criminal offense, grade as accessory after the fact, but not less than Category Three;

(b) *Otherwise*, grade as Category Three.

(c) Suborning perjury, grade as perjury.

612 *Unlawful False Statements Not Under Oath* Category One.

613 *Tampering With Evidence or Witness, Victim, Informant or Juror*

(a) If concerning a criminal offense, grade as accessory after the fact, but not less than Category Three.

(b) Otherwise, grade as Category Three.

(c) *Exception:* Intimidation by threat of physical harm, grade as not less than Category Five.

614 *Misprision of a Felony**

Grade as if ‘accessory after the fact’ but not higher than Category Three.

615 *Harboring a Fugitive*

Grade as if ‘accessory after the fact’ to the offense for which the fugitive is wanted, but not higher than Category Three.

616 *Escape*

If in connection with another offense for which a severity rating can be assessed, grade the underlying offense and apply the rescission guidelines to determine an additional penalty. Otherwise, grade as Category Three.

617 *Failure To Appear**

(a) In Felony Proceedings. If in connection with an offense for which a severity rating can be assessed, add to the guidelines otherwise appropriate the following: (i) ≤ 6 months if voluntary return within 6 days, or (ii) 6–12 months in any other case. Otherwise, grade as Category Three.

(b) In Misdemeanor Proceedings. Grade as Category One.

(c) *Note:* For purposes of this subsection, a misdemeanor is defined as an offense for which the maximum penalty authorized by law (not necessarily the penalty actually imposed) does not exceed one year.

618 *Contempt of Court*

(a) Criminal Contempt (re: 18 U.S.C. 402). Where imposed in connection with a prisoner

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serving a sentence for another offense, add ≤6 months to the guidelines otherwise appropriate.

(b) *Exception:* If a criminal sentence is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense, grade such conduct as if accessory after the fact.

(c) Civil Contempt. See 28 CFR 2.10.

Subchapter C—Official Corruption

621 *Bribery or Extortion [use of official position—no physical threat]*

(a) Grade as a “theft offense” according to the value of the bribe demanded or received, or the favor received by the bribe-giver (whichever is greater), but not less than Category Three. The “favor received” is the gross value of the property, contract, obligation, interest, or payment intended to be awarded to the bribe-giver in return for the bribe. Grade the bribe-taker in the same manner.

(b) If the above conduct involves a pattern of corruption (e.g., multiple instances), grade as not less than Category Four.

(c) If the purpose of the conduct is the obstruction of justice, grade as if “perjury”.

(d) *Notes:*

(1) The grading in this subchapter applies to each party to a bribe.

(2) The extent to which the criminal conduct involves a breach of public trust, causing injury beyond that describable by monetary gain, may be considered as an aggravating factor.

622 *Other Unlawful Use of Governmental Position*

Category Two.

Subchapter D—Voting Fraud

631 *Voting Fraud*

Category Four.

CHAPTER SEVEN OFFENSES INVOLVING INDIVIDUAL RIGHTS

Subchapter A—Offenses Involving Civil Rights

701 *Conspiracy Against Rights of Citizens* (re: 18 U.S.C. 241)

(a) If death results, grade as Category Eight;

(b) Otherwise, grade as if “assault”.

702 *Deprivation of Rights Under Color of Law* (re: 18 U.S.C. 242)

(a) If death results, grade as Category Eight;

(b) Otherwise, grade as if “assault”.

703 *Federally Protected Activity* (re: 18 U.S.C. 245)

(a) If death results, grade as Category Eight;

(b) Otherwise, grade as if “assault”.

704 *Intimidation of Persons in Real Estate Transactions Based on Racial Discrimination* (re: 42 U.S.C. 3631)

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(a) If death results, grade as Category Eight;

(b) Otherwise, grade as if “assault”.

705 *Transportation of Strikebreakers* (re: 18 U.S.C. 1231)

Category Two.

Subchapter B—Offenses Involving Privacy

711 *Interception and Disclosure of Wire or Oral Communications* (re: 18 U.S.C. 2511)

Category Two.

712 *Manufacture, Distribution, Possession, and Advertising of Wire or Oral Communication Intercepting Devices* (re: 18 U.S.C. 2512)

(a) *Category Three.*

(b) *Exception:* If simple possession, grade as Category Two.

713 *Unauthorized Opening of Mail*

Category Two.

CHAPTER EIGHT OFFENSES INVOLVING EXPLOSIVES AND WEAPONS

Subchapter A—Explosives Offenses and Other Dangerous Articles

801 *Unlawful Possession or Distribution of Explosives; or Use of Explosives During a Felony*

Grade according to offense intended, but not less than Category Five.

802 *Mailing Explosives or Other Injurious Articles With Intent To Commit a Crime*

Grade according to offense intended, but not less than Category Five.

Subchapter B—Firearms

811 *Possession by Prohibited Person* (e.g., felon)

(a) If single weapon (rifle, shotgun, or handgun) with ammunition of the same caliber, or ammunition of a single caliber (without weapon), grade as Category Three;

(b) If multiple weapons (rifles, shotguns, or handguns), or ammunition of different calibers, or single weapon and ammunition of a different caliber, grade as Category Four.

812 *Unlawful Possession or Manufacture of Sawed-off Shotgun, Machine Gun, Silencer, or “Assassination kit”*

(a) If silencer or “assassination kit”, grade as Category Six;

(b) If sawed-off shotgun or machine gun, grade as Category Five.

813 *Unlawful Distribution of Weapons or Possession With Intent To Distribute*

(a) If silencer(s) or “assassination kit(s)”, grade as Category Six;

(b) If sawed-off shotgun(s) or machine gun(s), grade as Category Five;

(c) If multiple weapons (rifles, shotguns, or handguns), or ammunition of different calibers, or single weapon and ammunition of a different caliber, grade as Category Four;

(d) If single weapon (rifle, shotgun, or handgun) with ammunition of the same caliber, or ammunition of a single caliber (without weapon), grade as Category Three.

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CHAPTER NINE OFFENSES INVOLVING ILLICIT DRUGS

Subchapter A—Heroin and Opiate* Offenses

901 *Distribution or Possession With Intent To Distribute*

(a) If extremely large scale (e.g., involving 3 kilograms or more of 100% pure heroin, or equivalent amount), grade as Category Eight [except as noted in (c) below];

(b) If very large scale (e.g., involving 1 kilogram but less than 3 kilograms of 100% pure heroin, or equivalent amount), grade as Category Seven [except as noted in (c) below];

(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;

(d) If large scale (e.g., involving 50–999 grams of 100% pure heroin, or equivalent amount), grade as Category Six [except as noted in (e) below];

(e) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (d) as Category Five.

(f) If medium scale (e.g., involving 5–49 grams of 100% pure heroin, or equivalent amount), grade as Category Five;

(g) If small scale (e.g., involving less than 5 grams of 100% pure heroin, or equivalent amount), grade as Category Four;

902 *Simple Possession* Category One.

Subchapter B—Marihuana and Hashish Offenses

911 *Distribution or Possession With Intent To Distribute*

(a) If extremely large scale (e.g., involving 20,000 pounds or more of marihuana/6,000 pounds or more of hashish/600 pounds or more of hash oil), grade as Category Six [except as noted in (b) below];

(b) Where the Commission finds that the offender had only a peripheral role, grade* conduct under (a) as Category Five;

(c) If very large scale (e.g., involving 2,000–19,999 pounds of marihuana/600–5,999 pounds of hashish/60–599 pounds of hash oil), grade as Category Five;

(d) If large scale (e.g., involving 200–1,999 pounds of marihuana/60–599 pounds of hashish/6–59.9 pounds of hash oil), grade as Category Four;

(e) If medium scale (e.g., involving 50–199 pounds of marihuana/15–59.9 pounds of hashish/1.5–5.9 pounds of hash oil), grade as Category Three;

(f) If small scale (e.g., involving 10–49 pounds of marihuana/3–14.9 pounds of hashish/3–1.4 pounds of hash oil), grade as Category Two;

(g) If very small scale (e.g., involving less than 10 pounds of marihuana/less than 3 pounds of hashish/less than .3 pounds of hash oil), grade as Category One.

912 *Simple Possession* Category One.

Subchapter C—Cocaine Offenses

921 *Distribution or Possession With Intent to Distribute*

(a) If extremely large scale (e.g., involving 15 kilograms or more of 100% purity, or equivalent amount; or 1.5 kilograms or more of freebased cocaine), grade as Category Eight [except as noted in (c) below];

(b) If very large scale (e.g., involving 5 kilograms, but less than 15 kilograms of 100% purity, or equivalent amount; or 500 grams but less than 1.5 kilograms of freebased cocaine), grade as Category Seven [except as noted in (c) below];

(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;

(d) If large scale (e.g., involving more than 1 kilogram, but less than 5 kilograms of 100% purity, or equivalent amount; or more than 100 grams, but less than 500 grams of freebased cocaine) grade as Category Six [except as noted in (e) below];

(e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;

(f) If medium scale (e.g., involving 100 grams–1 kilogram of 100% purity, or equivalent amount; or 10 grams–100 grams of freebased cocaine), grade as Category Five;

(g) If small scale (e.g., involving 5–99 grams of 100% purity, or equivalent amount; or 1 gram–9.9 grams of freebased cocaine), grade as Category Four;

(h) If very small scale (e.g., involving less than 1.0–4.9 grams of 100% purity, or equivalent amount; or less than 1 gram of freebased cocaine), grade as Category Three;

(i) If extremely small scale (e.g., involving less than 1 gram of 100% purity, or equivalent amount), grade as Category Two.

922 *Simple Possession* Category One.

Subchapter D—Other Illicit Drug Offenses

931 *Distribution or Possession With Intent To Distribute*

(a) If very large scale (e.g., involving more than 200,000 doses), grade as Category Six [except as noted in (b) below];

(b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;

(c) If large scale (e.g., involving 20,000–200,000 doses), grade as Category Five;

(d) If medium scale (e.g., involving 1,000–19,999 doses), grade as Category Four;

(e) If small scale (e.g., involving 200–999 doses), grade as Category Three;

(f) If very small scale (e.g., involving less than 200 doses), grade as Category Two.

932 *Simple Possession* Category One.

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NOTES TO CHAPTER NINE:

(1) Grade manufacture of synthetic illicit drugs as listed above, but not less than Category Five.

(2) "Equivalent amounts" for the cocaine and opiate categories may be computed as follows: 1 gram of 100% pure is equivalent to 2 grams of 50% pure and 10 grams of 10% pure, etc.

(3) Grade unlawful possession or distribution of precursors of illicit drugs as Category Five (i.e., aiding and abetting the manufacture of synthetic illicit drugs).

(4) If weight, but not purity is available, the following grading may be used:

Heroin

Extremely large scale—6 kilograms or more

Very large scale—2-5.99 kilograms

Large scale—200 gms.-1.99 kilograms

Medium scale—28.35-199.99 gms.

Small scale—Less than 28.35 gms.

Cocaine

Extremely large scale—18.75 kilograms or more

Very large scale—6.25-18.74 kilograms

Large scale—1.25-6.24 kilograms

Medium scale—200 gms.-1.24 kilograms

Small scale—20 gms.-199.99 gms.

Very small scale—4 gms.-19.99 gms.

Extremely small scale—Less than 4 gms.

CHAPTER TEN OFFENSES INVOLVING NATIONAL DEFENSE

Subchapter A—Treason and Related Offenses

1001 *Treason*

Category Eight.

1002 *Rebellion or Insurrection*

Category Seven.

Subchapter B—Sabotage and Related Offenses

1011 *Sabotage*

Category Eight.

1012 *Enticing Desertion*

(a) In time of war or during a national defense emergency, grade as Category Four;

(b) Otherwise, grade as Category Three.

1013 *Harboring or Aiding a Deserter*

Category One.

Subchapter C—Espionage and Related Offenses

1021 *Espionage*

Category Eight.

Subchapter D—Selective Service Offenses

1031 *Failure to Register, Report for Examination or Induction*

(a) If committed during time of war or during a national defense emergency, grade as Category Four;

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(b) If committed when draftees are being inducted into the armed services, grade as Category Three;

(c) Otherwise, grade as Category One.

Subchapter E—Other National Defense Offenses

1041 *Offenses Involving Nuclear Energy*

Unauthorized production, possession, or transfer of nuclear weapons or special nuclear material or receipt of or tampering with restricted data on nuclear weapons or special nuclear material, grade as Category Eight.

1042 *Violations of Export Administration Act* (50 U.S.C. 2410)

Grade conduct involving "national security controls" or "nuclear nonproliferation controls" as Category Six.

1043 *Violations of the Arms Control Act* (22 U.S.C. 2278)

(a) Grade conduct involving export of sophisticated weaponry (e.g., aircraft, helicopters, armored vehicles, or "high technology" items) as Category Six.

(b) Grade Conduct involving export of other weapons (e.g., rifles, handguns, machine guns, or hand grenades) as if a weapons/explosive distribution offense under Offenses Involving Explosives and Weapons (Chapter Eight).

CHAPTER ELEVEN—OFFENSES INVOLVING ORGANIZED CRIME ACTIVITY, GAMBLING, OBSCENITY, SEXUAL EXPLOITATION OF CHILDREN, PROSTITUTION, NON-GOVERNMENTAL CORRUPTION, AND THE ENVIRONMENT

Subchapter A—Organized Crime Offenses

1101 *Racketeer Influence and Corrupt Organizations* (re: 18 U.S.C. 1961-63)

Grade according to the underlying offense attempted, but not less than Category Five.

1102 *Interstate or Foreign Travel or Transportation in Aid of Racketeering Enterprise* (re: 18 U.S.C. 1952)

Grade according to the underlying offense attempted, but not less than Category Three.

Subchapter B—Gambling Offenses

1111 *Gambling Law Violations—Operating or Employment in an Unlawful Business* (re: 18 U.S.C. 1955)

(a) If large scale operation [e.g., Sports books (estimated daily gross more than \$15,000); Horse books (estimated daily gross more than \$4,000); Numbers bankers (estimated daily gross more than \$2,000); Dice or card games (estimated daily 'house cut' more than \$1,000); video gambling (eight or more machines)]; grade as Category Four;

(b) If medium scale operation [e.g., Sports books (estimated daily gross \$5,000-\$15,000); Horse books (estimated daily gross \$1,500-\$4,000); Numbers bankers (estimated daily

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gross \$750—\$2,000); Dice or card games (estimated daily 'house cut' \$400—\$1,000); video gambling (four-seven machines)]; grade as Category Three;

(c) If small scale operation [e.g., Sports books (estimated daily gross less than \$5,000); Horse books (estimated daily gross less than \$1,500); Numbers bankers (estimated daily gross less than \$750); Dice or card games (estimated daily 'house cut' less than \$400); video gambling (three or fewer machines)]; grade as Category Two;

(d) *Exception*: Where it is established that the offender had no proprietary interest or managerial role, grade as Category One.

1112 *Interstate Transportation of Wagering Paraphernalia* (re: 18 U.S.C. 1953)

Grade as if 'operating a gambling business'.

1113 *Wire Transmission of Wagering Information* (re: 18 U.S.C. 1084)

Grade as if "operating a gambling business".

1114 *Operating or Owning a Gambling Ship* (re: 18 U.S.C. 1082)

Category Three.

1115 *Importing or Transporting Lottery Tickets; Mailing Lottery Tickets or Related Matter* (re: 18 U.S.C. 1301, 1302)

(a) Grade as if "operating a gambling business";

(b) *Exception*: If non-commercial, grade as Category One.

Subchapter C—Obscenity

1121 *Mailing, Importing, or Transporting Obscene Matter*

(a) If for commercial purposes, grade as Category Three;

(b) Otherwise, Category One.

1122 *Broadcasting Obscene Language*

Category One.

Subchapter D—Sexual Exploitation of Children

1131 *Sexual Exploitation of Children** (re: 18 U.S.C. 2251, 2252)

(a) Category Six;

(b) *Exception*: Where the Commission finds the offender had only a peripheral role (e.g., a retailer receiving such material for resale but with no involvement in the production or wholesale distribution of such material), grade as Category Five.

Subchapter E—Prostitution and White Slave Traffic

1141 *Interstate Transportation for Commercial Purposes*

(a) If physical coercion, or involving person(s) of age less than 18, grade as Category Six;

(b) Otherwise, grade as Category Four.

1142 *Prostitution*

Category One.

Subchapter F—Non-Governmental Corruption

1151 *Demand or Acceptance of Unlawful Gratuity Not Involving Federal, State, or Local Government Officials*

Grade as if a fraud offense according to (1) the amount of the bribe offered or demanded, or (2) the financial loss to the victim, whichever is higher.

1152 *Sports Bribery*

If the conduct involves bribery in a sporting contest, grade as if a theft offense according to the amount of the bribe, but not less than Category Three.

Subchapter G—Currency Offenses

1161 *Reports on Monetary Instrument Transactions*

(a) If extremely large scale (e.g., the estimated gross amount of currency involved is more than \$5,000,000), grade as Category Seven;

(b) If very large scale (e.g., the estimated gross amount of currency involved is more than \$1,000,000 but not more than \$5,000,000), grade as Category Six;

(c) If large scale (e.g., the estimated gross amount of currency involved is more than \$200,000 but not more than \$1,000,000), grade as Category Five;

(d) If medium scale (e.g., the estimated gross amount of currency involved is at least \$40,000 but not more than \$200,000), grade as Category Four;

(e) If small scale (e.g., the estimated gross amount of currency involved is less than \$40,000), grade as Category Three.

Subchapter H—Environmental Offenses

1171 *Knowing Endangerment Resulting From Unlawful Treatment, Transportation, Storage, or Disposal of Hazardous Waste* [Re: 42 U.S.C. 6928(e)]

(a) If death results, grade as Category Seven;

(b) If serious bodily injury results, grade as Category Six;

(c) Otherwise, grade as Category Five.

(d) *Note*: Knowing Endangerment requires a finding that the offender knowingly transported, treated, stored, or disposed of any hazardous waste and knew that he thereby placed another person in imminent danger of death or serious bodily injury.

1172 *Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility* [Re: 42 U.S.C. 6928(d)(1-2)]

(a) If death results, grade as Category Six;

(b) If (1) serious bodily injury results; or (2) a substantial potential for death or serious bodily injury in the future results; or (3) a substantial disruption to the environment results (e.g., estimated cleanup cost exceeds

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\$200,000, or a community is evacuated for more than 72 hours), grade as Category Five;

(c) If (1) bodily injury results, or (2) a significant disruption to the environment results (e.g., estimated cleanup costs of \$40,000–\$200,000, or a community is evacuated for 72 hours or less), grade as Category Four;

(d) Otherwise, grade as Category Three;

(e) *Exception:* Where the offender is a non-managerial employee (i.e., a truck driver or loading dock worker) acting under the orders of another person, grade as two categories below the underlying offense, but not less than Category One.

CHAPTER TWELVE MISCELLANEOUS OFFENSES

If an offense behavior is not listed, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed in Chapters One–Eleven. If, and only if, an offense behavior cannot be graded by reference to Chapters One–Eleven, the following formula may be used as a guide.

Maximum sentence authorized by statute (not necessarily the sentence imposed)	Grading (category)
< 2 years	1
2 to 3 years	2
4 to 5 years	3
6 to 10 years	4
11 to 20 years	5
21 to 29 years	6
30 years to life	7

CHAPTER THIRTEEN GENERAL NOTES AND DEFINITIONS

Subchapter A—General Notes

1. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

2. If an offense behavior involved multiple separate offenses, the severity level may be increased. *Exception:* in cases graded as Category Seven, multiple separate offenses are to be taken into account by consideration of a decision above the guidelines rather than by increasing the severity level.

(a) In certain instances, the guidelines specify how multiple offenses are to be rated. In offenses rated by monetary loss (e.g., theft and related offenses, counterfeiting, tax evasion) or drug offenses, the total amount of the property or drugs involved is used as the basis for the offense severity rating. In instances not specifically covered in the guidelines, the decision-makers must exercise discretion as to whether or not the multiple offense behavior is sufficiently aggravating to justify increasing the severity rating. The following chart is intended to provide guidance in assessing whether the severity of multiple offenses is sufficient to

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raise the offense severity level; it is not intended as a mechanical rule.

MULTIPLE SEPARATE OFFENSES

Severity	Points	Severity	Points
Category One	= 1/9	Category Five	= 9
Category Two	= 1/3	Category Six	= 27
Category Three	= 1	Category Seven	= 45
Category Four	= 3

Examples: 3 Category Five Offense
[3x(9)=27]=Category Six, 5 Category Five
Offenses [5x(9)=45]=Category Seven, 2
Category Six Offenses
[2x(27)=54]=Category Seven

(b) The term ‘multiple separate offenses’ generally refers to offenses committed at different times. However, there are certain circumstances in which offenses committed at the same time are properly considered multiple separate offenses for the purpose of establishing the offense severity rating. These include (1) unrelated offenses, and (2) offenses involving the unlawful possession of weapons during commission of another offense.

(c) For offenses graded according to monetary value (e.g., theft) and drug offenses, the severity rating is based on the amount or quantity involved and not on the number of separate instances.

(d) *Intervening Arrests.* Where offenses ordinarily graded by aggregation of value/quantity (e.g., property or drug offenses) are separated by an intervening arrest, grade (1) by aggregation of value/quantity or (2) as multiple separate offenses, whichever results in a higher severity category.

(e) *Income Tax Violations Related to Other Criminal Activity.* Where the circumstances indicate that the offender’s income tax violations are related to failure to report income from other criminal activity (e.g., failure to report income from a fraud offense) grade as tax evasion or according to the underlying criminal activity established, whichever is higher. Do not grade as multiple separate offenses.

3. In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences have expired.

4. The prisoner is to be held accountable for his own actions and actions done in concert with others; however, the prisoner is not to be held accountable for activities committed by associates over which the prisoner has no control and could not have been reasonably expected to foresee. However, if the prisoner has been convicted of a conspiracy, he must be held accountable for the criminal

activities committed by his co-conspirators, provided such activities were committed in furtherance of the conspiracy and subsequent to the date the prisoner joined the conspiracy. However, if the prisoner has been convicted of a conspiracy, he must be held accountable for the criminal activities committed by his co-conspirators, provided such activities were committed in furtherance of the conspiracy and subsequent to the date the prisoner joined the conspiracy, except in the case of an independent, small-scale operator whose role in the conspiracy was neither established nor significant. An offender has an "established" role in a conspiracy if, for example, he takes orders to perform a function that assist others to further the objectives of the conspiracy, even if his activities did not significantly contribute to those objectives. For such offenders, however, a "peripheral role" reduction may be considered.

5. The following are examples of circumstances that may be considered as aggravating factors: extreme cruelty or brutality to a victim; the degree of permanence or likely permanence of serious bodily injury resulting from the offender's conduct; an offender's conduct while attempting to evade arrest that causes circumstances creating a significant risk of harm to other persons (e.g., causing a high speed chase or provoking the legitimate firing of a weapon by law enforcement officers).

6. The phrase "may be considered an aggravating/mitigating factor" is used in this index to provide guidance concerning certain circumstances which may warrant a decision above or below the guidelines. This does not restrict consideration of above or below guidelines decisions only to these circumstances, nor does it mean that a decision above or below the guidelines is mandated in every such case.

Subchapter B—Definitions

1. "Accessory after the fact" refers to the conduct of one who, knowing an offense has been committed, assists the offender to avoid apprehension, trial, or punishment (e.g., by assisting in disposal of the proceeds of an offense).

NOTE: Where the conduct consists of concealing an offense by making false statements not under oath, grade as "misprision of felony". Where the conduct consists of harboring a fugitive, grade as "harboring a fugitive".

2. "Assassination kit" refers to a disguised weapon designed to kill without attracting attention. Unlike other weapons such as sawed-off shotguns which can be used to intimidate, assassination kits are intended to be undetectable in order to make the victim and bystanders unaware of the threat. A typical assassination kit is usually, but not always, a firearm with a silencer concealed in

a briefcase or similar disguise and fired without showing the weapon.

3. "Bodily injury" refers to injury of a type normally requiring medical attention [e.g., broken bone(s), laceration(s) requiring stitches, severe bruises].

4. "Carnal knowledge" refers to sexual intercourse with a female who is less than 16 years of age and is not the wife of the offender.

5. "Extortionate extension of credit" refers to any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

6. "Failure to appear" refers to the violation of court imposed conditions of release pending trial, appeal, or imposition or execution of sentence by failure to appear before the court or to surrender for service of sentence.

7. "Forcible felony" includes, but shall not be limited to, kidnaping, rape or sodomy, aircraft piracy or interference with a flight crew, arson or property destruction offenses, escape, robbery, extortion, or criminal entry offenses, and attempts to commit such offenses.

8. "Involuntary manslaughter" refers to the unlawful killing of a human being without malice in the commission of an unlawful act not amounting to a felony, or in the commission in a unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

9. "Misprision of felony" refers to the conduct of one who, having knowledge of the actual commission of a felony, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority. The "concealment" described above requires an act of commission (e.g., making a false statement to a law enforcement officer).

10. "Murder" refers to the unlawful killing of a human being with malice aforethought. "With malice aforethought" generally refers to a finding that the offender formed an intent to kill or do serious bodily harm to the victim without just cause or provocation.

11. "Opiate" includes heroin, morphine, opiate derivatives, and synthetic opiate substitutes.

12. "Other illicit drug offenses" include, but are not limited to, offenses involving the following: amphetamines, hallucinogens, barbiturates, methamphetamines, and phencyclidine (PCP).

13. "Other medium of exchange" includes, but is not limited to, postage stamps, governmental money orders, or governmental coupons redeemable for cash or goods.

14. "Peripheral role" in drug offenses refers to conduct such as that of a person hired as a deckhand on a marijuana boat, a person hired to help offload marijuana, a person with no special skills hired as a simple courier of drugs on a commercial airline flight, or a person hired as a chauffeur in a drug transaction. This definition does not include persons with decision-making or supervisory authority, persons with relevant special skills (e.g., a boat captain, chemist, or airplane pilot), or persons who finance such operations. Individuals who transport unusually large amounts of drugs (e.g., 50 kilos of cocaine or more) or who otherwise appear to have a high degree of trust, professionalism, or control will be considered to be "transporters" and not "simple couriers."

15. "Protected person" refers to a person listed in 18 U.S.C. 351 (relating to Members of Congress), 1116 (relating to foreign officials, official guests, and internationally protected persons), or 1751 (relating to presidential assassination and officials in line of succession).

16. "Serious bodily injury" refers to injury creating a substantial risk of death, major disability or loss of a bodily function, or disfigurement.

17. "Serious bodily injury is the result intended" refers to a limited category of offense behaviors where the circumstances indicate that the bodily injury intended was serious (e.g., throwing acid in a person's face, or firing a weapon at a person) but where it is not established that murder was the intended object. Where the circumstances establish that murder was the intended object, grade as an 'attempt to murder'.

18. "Sexual exploitation of children" refers to employing, using, inducing, enticing, or coercing a person less than 18 years of age to engage in any sexually explicit conduct for the purpose of producing a visual or print medium depicting such conduct with knowledge or reason to know that such visual or print medium will be distributed for sale, transported in interstate or foreign commerce, or mailed. It also includes knowingly transporting, shipping, or receiving such visual or print medium for the purposes of distributing for sale, or knowingly distribution for sale such visual or print medium.

19. "Trafficking in stolen property" refers to receiving stolen property with intent to sell.

20. The "value of the property" is determined by estimating the actual or potential replacement cost to the victim. The "actual replacement cost" is the value or money permanently lost to the victim through theft/forgery/fraud. The "potential replacement cost" refers to the total loss the offender specifically intended to cause by theft/forgery/fraud, or the total amount of the victim's money or property unlawfully exposed

to risk of loss through theft/forgery/fraud notwithstanding subsequent recovery by the victim. The highest of these three values is the value to be used in rating the offense on the guidelines.

21. "Voluntary manslaughter" refers to the unlawful killing of a human being without malice upon a sudden quarrel or heat of passion."

SALIENT FACTOR SCORING MANUAL

The following instructions serve as a guide in computing the salient factor score.

ITEM A. PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) [[None = 3; One = 2; Two or three = 1; Four or more. . . . = 0]]

A.1 *In General.* Count all convictions/adjudications (adult or juvenile) for criminal offenses (other than the current offense) that were committed prior to the present period of confinement, except as specifically noted. Convictions for prior offenses that are charged or adjudicated together (e.g., three burglaries) are counted as a single prior conviction, except when such offenses are separated by an intervening arrest (e.g., three convictions for larceny and a conviction for an additional larceny committed after the arrest for the first three larcenies would be counted as two prior convictions, even if all four offenses were adjudicated together). Do not count the current federal offense or state/local convictions resulting from the current federal offense (i.e., offenses that are considered in assessing the severity of the current offense). *Exception:* Where the first and last overt acts of the current offense behavior are separated by an intervening federal conviction (e.g., after conviction for the current federal offense, the offender commits another federal offense while on appeal bond), both offenses are counted in assessing offense severity; the earlier offense is also counted as a prior conviction in the salient factor score.

A.2 *Convictions.* (a) Felony convictions are counted. Non-felony convictions are counted, except as listed under (b) and (c). Convictions for driving while intoxicated/while under the influence/while impaired, or leaving the scene of an accident involving injury or an attended vehicle are counted. For the purpose of scoring Item A of the salient factor score, use the offense of conviction.

(b) Convictions for the following offenses are counted only if the sentence resulting was a commitment of more than thirty days (as defined in item B) or probation of one year or more (as defined in Item E), or if the record indicates that the offense was classified by the jurisdiction as a felony (regardless of sentence):

1. Contempt of court;

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2. Disorderly conduct/disorderly person/breach of the peace/disturbing the peace/uttering loud and abusive language;
3. Driving without a license/with a revoked or suspended license/with a false license;
4. False information to a police officer;
5. Fish and game violations;
6. Gambling (e.g., betting on dice, sports, cards) [Note: Operation or promotion of or employment in an unlawful gambling business is not included herein];
7. Loitering;
8. Non-support;
9. Prostitution;
10. Resisting arrest/evade and elude;
11. Trespassing;
12. Reckless driving;
13. Hindering/failure to obey a police officer;
14. Leaving the scene of an accident (except as listed under (a)).

(c) Convictions for certain minor offenses are not counted, regardless of sentence. These include:

1. Hitchhiking;
2. Local regulatory violations;
3. Public intoxication/possession of alcohol by a minor/possession of alcohol in an open container;
4. Traffic violations (except as specifically listed);
5. Vagrancy/vagabond and rogue;
6. Civil contempt.

A.3 *Juvenile Conduct*. Count juvenile convictions/adjudications except as follows:

(a) Do not count any status offense (e.g., runaway, truancy, habitual disobedience) unless the behavior included a criminal offense which would otherwise be counted;

(b) Do not count any criminal offense committed at age 15 or less, unless it resulted in a commitment of more than 30 days.

A.4 *Military Conduct*. Count military convictions by general or special court-martial (not summary court-martial or Article 15 disciplinary proceeding) for acts that are generally prohibited by civilian criminal law (e.g., assault, theft). Do not count convictions for strictly military offenses. *Note*: This does not preclude consideration of serious or repeated military misconduct as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

A.5 *Diversion*. Conduct resulting in diversion from the judicial process without a finding of guilt (e.g., deferred prosecution, probation without plea) is not to be counted in scoring this item. However, behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be counted as a conviction even if a conviction is not formally entered.

A.6 *Setting Aside of Convictions/Restoration of Civil Rights* Setting aside or removal of juvenile convictions/adjudications is normally for civil purposes (to remove civil pen-

alties and stigma). Such convictions/adjudications are to be counted for purposes of assessing parole prognosis. This also applies to adult convictions/adjudications which may be set aside by various methods (including pardon). However, convictions/adjudications that were set aside or pardoned on grounds of innocence are not to be counted.

A.7 *Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error*. Exclude any conviction reversed or vacated for constitutional or procedural grounds, unless the prisoner has been retried and reconvicted. It is the Commission's presumption that a conviction/adjudication is valid, except under the limited circumstances described in the first note below. If a prisoner challenges such conviction he/she should be advised to petition for a reversal of such conviction in the court in which he/she was originally tried, and then to provide the Commission with evidence of such reversal. *Note*: Occasionally the presentence report documents facts clearly indicating that a conviction was unconstitutional for deprivation of counsel [this occurs only when the conviction was for a felony, or for a lesser offense for which imprisonment was actually imposed; and the record is clear that the defendant (1) was indigent, and (2) was not provided counsel, and (3) did not waive counsel]. In such case, do not count the conviction. Similarly, do not count a conviction if: (1) the offender has petitioned the appropriate court to overturn a felony conviction that occurred prior to 1964, or a misdemeanor/petty offense conviction that occurred prior to 1973 (and the offender claims he served a jail sentence for the non-felony conviction); (2) the offender asserts he was denied his right to counsel in the prior conviction; and (3) the offender provides evidence (e.g., a letter from the court clerk) that the records of the prior conviction are unavailable. *Note*: If a conviction found to be invalid is nonetheless supported by persuasive information that the offender committed the criminal act, this information may be considered as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score).

A.8 *Ancient Prior Record*. If both of the following conditions are met: (1) The offender's only countable convictions under Item A occurred at least ten years prior to the commencement of the current offense behavior (the date of the last countable conviction under Item A refers to the date of the conviction, itself, not the date of the offense leading to conviction), and (2) there is at least a ten year commitment free period in the community (including time on probation or parole) between the last release from a countable commitment (under Item B) and the commencement of the current offense behavior; then convictions/commitments prior to the above ten year period are not to be

counted for purposes of Item A, B, or C. *Note:* This provision does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score). Similarly, a substantial crime free period in the community, not amounting to ten years, may, in light of other factors, indicate that the offender belongs in a better risk category than the salient factor score indicates.

A.9 *Foreign Convictions.* Foreign convictions (for behavior that would be criminal in the United States) are counted.

A.10 *Tribal Court Convictions.* Tribal court convictions are counted under the same terms and conditions as any other conviction.

A.11 *Forfeiture of Collateral.* If the only known disposition is forfeiture of collateral, count as a conviction (if a conviction for such offense would otherwise be counted).

A.12 *Conditional/Unconditional Discharge (New York State).* In N.Y. State, the term “conditional discharge” refers to a conviction with a suspended sentence and unsupervised probation; the term “unconditional discharge” refers to a conviction with a suspended sentence. Thus, such N.Y. State dispositions for countable offenses are counted as convictions.

A.13 *Adjudication Withheld (Florida).* In Florida, the term “adjudication withheld” refers to a disposition in which a formal conviction is not entered at the time of sentencing, the purpose of which is to allow the defendant to retain his civil rights and not to be classified as a convicted felon. Since the disposition of adjudication withheld is characterized by an admission of guilt and/or a finding of guilt before a judicial body, dispositions of “adjudication withheld” are to be counted as convictions for salient factor scoring purposes. However, it is not considered a conviction on which forfeiture of street time can be based.

ITEM B. PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE) [[None=-2; One or two=1; Three or more=0]]

B.1 Count all prior commitments of more than thirty days (adult or juvenile) resulting from a conviction/adjudication listed under Item A, except as noted below. Also count commitments of more than thirty days imposed upon revocation of probation or parole where the original probation or parole resulted from a conviction/adjudication counted under Item A.

B.2 Count only commitments that were imposed prior to the commission of the last overt act of the current offense behavior. Commitments imposed after the current offense are not counted for purposes of this item. Concurrent or consecutive sentences

(whether imposed as the same time or at different times) that result in a continuous period of confinement count as a single commitment. However, a new court commitment of more than thirty days imposed for an escape/attempted escape or for criminal behavior committed while in confinement/escape status counts as a separate commitment.

B.3 *Definitions.* (a) This item only includes commitments that were actually imposed. Do not count a suspended sentence as a commitment. Do not count confinement pending trial or sentencing or for study and observation as a commitment unless the sentence is specifically to “time served”. If a sentence imposed is subsequently reconsidered and reduced, do not count as a commitment if it is determined that the total time served, including jail time, was 30 days or less. Count a sentence to intermittent confinement (e.g., weekends) totalling more than 30 days.

(b) This item includes confinement in adult or juvenile institutions, and residential treatment centers. It does not include foster home placement. Count confinement in a community treatment center when part of a committed sentence. Do not count confinement in a CTC when imposed as a condition of probation or parole. Do not count self-commitment for drug or alcohol treatment.

(c) If a committed sentence of more than thirty days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal), count as a prior commitment. *Note:* Where the subject unlawfully avoids service of a prior commitment by escaping or failing to appear for service of sentence, this commitment is also to be considered in Items D and E. *Example:* An offender is sentenced to a term of three years confinement, released on appeal bond, and commits the current offense. Count as a previous commitment under Item B, but not under Items D and E. To be considered under Items D and E, the avoidance of sentence must have been unlawful (e.g., escape or failure to report for service or sentence).

ITEM C. AGE AT COMMENCEMENT OF THE CURRENT OFFENSE/PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE)

C.1 Score 2 if the subject was 26 years of age or more at the commencement of the current offense and has fewer than five prior commitments.

C.2 Score 1 if the subject was 20-25 years of age at the commencement of the current offense and has fewer than five prior commitments.

C.3 Score 0 if the subject was 19 years of age or less at the commencement of the current offense, or if the subject has five or more prior commitments.

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C.4 *Definitions.* (a) Use the age at the commencement of the subject's current federal offense behavior, except as noted under special instructions for federal probation/parole/confinement/escape status violators.

(b) Prior commitment is defined under Item B.

ITEM D. RECENT COMMITMENT FREE PERIOD (THREE YEARS)

D.1 Score 1 if the subject has no prior commitments; or if the subject was released to the community from his/her last prior commitment at least three years prior to commencement of his/her current offense behavior.

D.2 Score 0 if the subject's last release to the community from a prior commitment occurred less than three years prior to the current offense behavior; or if the subject was in confinement/escape status at the time of the current offense.

D.3 *Definitions.* (a) Prior commitment is defined under Item B.

(b) Confinement/escape status is defined under Item E.

(c) Release to the community means release from confinement status (e.g., a person paroled through a CTC is released to the community when released from the CTC, not when placed in the CTC).

ITEM E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME

E.1 Score 1 if the subject was not on probation or parole, nor in confinement or escape status at the time of the current offense behavior; and was not committed as a probation, parole, confinement, or escape status violator this time.

E.2 Score 0 if the subject was on probation or parole or in confinement or escape status at the time of the current offense behavior; or if the subject was committed as a probation, parole, confinement, or escape status violator this time.

E.3 *Definitions.* (a) The term probation/parole refers to a period of federal, state, or local probation or parole supervision. Occasionally, a court disposition such as 'summary probation' or 'unsupervised probation' will be encountered. If it is clear that this disposition involved no attempt at supervision, it will not be counted for purposes of this item. *Note:* Unsupervised probation/parole due to deportation is counted in scoring this item.

(b) The term 'parole' includes parole, mandatory parole, conditional release, or mandatory release supervision (i.e., any form of supervised release).

(c) The term 'confinement/escape status' includes institutional custody, work or study release, pass or furlough, community treatment center confinement, or escape from any of the above.

ITEM F. HISTORY OF HEROIN/OPIATE DEPENDENCE

F.1 Score 1 if the subject has no history of heroin or opiate dependence.

F.2 Score 0 if the subject has any record of heroin or opiate dependence.

F.3 Ancient Heroin/Opiate Record. If the subject has no record of heroin/opiate dependence within ten years (not counting any time spent in confinement), do not count a previous heroin/opiate record in scoring this item.

F.4 *Definition.* For calculation of the salient factor score, the term 'heroin/opiate dependence' is restricted to dependence on heroin, morphine, or dilaudid. Dependence refers to physical or psychological dependence, or regular or habitual usage. Abuse of other opiate or non-opiate substances is not counted in scoring this item. However, this does not preclude consideration of serious abuse of a drug not listed above as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

ITEM G. OLDER OFFENDERS

G.1 Score 1 if the offender was 41 years of age or more at the commencement of the current offense and the total score from Items A-F is 9 or less.

G.2 Score 0 if the offender was less than 41 years of age at the commencement of the current offense or if the total score from Items A-F is 10.

SPECIAL INSTRUCTIONS—FEDERAL PROBATION VIOLATORS

Item A Count the original federal offense as a prior conviction. Do not count the conduct leading to probation revocation as a prior conviction.

Item B Count all prior commitments of more than thirty days which were imposed prior to the behavior resulting in the current probation revocation. If the subject is committed as a probation violator following a 'split sentence' for which more than thirty days were served, count the confinement portion of the 'split sentence' as a prior commitment. *Note:* The prisoner is still credited with the time served toward the current commitment.

Item C Use the age at commencement of the probation violation, not the original offense.

Item D Count backwards three years from the commencement of the probation violation.

Item E By definition, no point is credited for this item. *Exception:* A case placed on unsupervised probation (other than for deportation) would not lose credit for this item.

Item F No special instructions.

Item G Use the age at commencement of the probation violation, not the original offense.

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SPECIAL INSTRUCTIONS—FEDERAL PAROLE VIOLATORS

Item A The conviction from which paroled counts as a prior conviction.

Item B The commitment from which paroled counts as a prior commitment.

Item C Use the age at commencement of the new criminal behavior/parole violation behavior.

Item D Count backwards three years from the commencement of the new criminal behavior/parole violation behavior.

Item E By definition, no point is credited for this item.

Item F No special instructions.

Item G Use the age at commencement of the new criminal/parole violation behavior.

SPECIAL INSTRUCTIONS—FEDERAL CONFINEMENT/ESCAPE STATUS VIOLATORS WITH NEW CRIMINAL BEHAVIOR IN THE COMMUNITY

Item A The conviction being served at the time of the confinement/escape status violation counts as a prior conviction.

Item B The commitment being served at the time of the confinement/escape status violation counts as a prior commitment.

Item C Use the age at commencement of the confinement/escape status violation.

Item D By definition, no point is credited for this item.

Item E By definition, no point is credited for this item.

Item F No special instructions.

Item G Use the age at commencement of the confinement/escape status violation.

(18 U.S.C. 4203(a)(1); 18 U.S.C. 4204(a)(6))

[47 FR 56336, Dec. 16, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 2.20, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 2.21 Reparole consideration guidelines.

(a)(1) If revocation is based upon administrative violation(s) only, grade the behavior as if a Category One offense under § 2.20.

(2) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New criminal conduct may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by

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analogy with listed federal offense behaviors.

(b) The guidelines for parole consideration specified at 28 CFR 2.20 shall then be applied with the salient factor score recalculated. The conviction and commitment from which the offender was released shall be counted as a prior conviction and commitment.

(c) Time served on a new state or federal sentence shall be counted as time in custody for reparole guideline purposes. This does not affect the computation of the expiration date of the violator term as provided by §§ 2.47(d) and 2.52 (c) and (d).

(d) The above are merely guidelines. A decision outside these guidelines (either above or below) may be made when circumstances warrant.

[50 FR 40368, Oct. 3, 1985]

§ 2.22 Communication with the Commission.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Commission must submit a written request to the appropriate office setting forth the nature of the information to be discussed. Such interview may be conducted by a Commissioner or assigned staff, and a written summary of each such interview shall be prepared and placed in the prisoner's file.

[43 FR 22707, May 28, 1978]

§ 2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority necessary to conduct hearings and to make recommendations relative to the grant or denial of parole or reparole, revocation or reinstatement of parole or mandatory release, and conditions of parole. Any hearing may be conducted by a single examiner or by a panel of examiners. A Executive Hearing Examiner shall function as a hearing examiner for the purpose of obtaining a panel recommendation whenever the Regional Commissioner has not ordered that a hearing be conducted by a panel of two examiners.

(b) The concurrence of two hearing examiners, or of a hearing examiner

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and the Executive Hearing Examiner, shall be required to obtain a panel recommendation to the Regional Commissioner. A panel recommendation is required in each case decided by a Regional Commissioner after the holding of a hearing.

(c) An examiner panel recommendation consists of two concurring examiner votes. In the event of divergent votes, the case shall be referred to another hearing examiner (or to the Executive Hearing Examiner in the case of a hearing conducted by a panel of examiners) for another vote. If concurring votes do not result from such a referral, the case shall be referred to any available hearing examiner until a panel recommendation is obtained.

(d) A recommendation of a hearing examiner panel shall become an effective Commission decision only upon the Regional Commissioner's approval, and docketing at the regional office.

[44 FR 3408, Jan. 16, 1979, as amended at 45 FR 84052, Dec. 12, 1980; 59 FR 45625, Sept. 2, 1994; 60 FR 51349, Oct. 2, 1995]

§ 2.24 Review of panel recommendation by the Regional Commissioner.

(a) A Regional Commissioner may review the recommendation of any examiner panel and refer this recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for consideration and any action deemed appropriate. Written notice of this referral action shall be mailed or transmitted to the prisoner within twenty-one days of the date of the hearing. The Regional Commissioner and each National Commissioner shall have one vote and decisions shall be based upon the concurrence of two votes. Action shall be taken by the National Commissioners within thirty days of the date of referral action by the Regional Commissioner, except in emergencies.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Regional Commissioner may:

(1) On his own motion, modify or reverse the recommendation of a hearing examiner panel that is outside the guidelines to bring the decision closer to (or to) the nearer limit of the appropriate guideline range; or

(2) On his own motion, modify the recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel;

(3) Return the case to the institution for a rehearing, provided that a notice of action is sent to the prisoner specifying the purpose of the rehearing;

(4) Designate the case for the original jurisdiction of the Commission pursuant to § 2.17.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 84053, Dec. 22, 1980; 46 FR 35639, July 10, 1981]

§ 2.25 [Reserved]

§ 2.26 Appeal to National Appeals Board.

(a) A prisoner or parolee may submit to the National Appeals Board a written appeal of any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to § 2.17 shall be pursuant to § 2.27. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision. No exhibits are to be attached to an administrative appeal unless the documents therein contain new information and materials not already in the possession of the Commission. Any submitted exhibits which are copies of material already in the Commission's files will not be retained by the Commission.

(b)(1) The National Appeals Board may: Affirm the decision of a Regional Commissioner on the vote of a single Commissioner other than the Commissioner who issued the decision from which the appeal is taken; or modify or reverse the decision of a Regional Commissioner, or order a new hearing, upon the concurrence of two Commissioners. The Commissioner first reviewing the case may in his discretion circulate the case for review and vote by the other Commissioners notwithstanding his own vote to affirm the Regional Commissioner's decision. In such event, the case shall be decided by the concurrence of two out of three votes.

(2) All Commissioners serve as members of the National Appeals Board,

and it shall in no case be an objection to a decision of the Board that the Commissioner who issued the decision from which an appeal is taken participated as a voting member on appeal.

(c) The National Appeals Board shall act within sixty days of receipt of the appellant's papers, to affirm, modify, or reverse the decision. Decisions of the National Appeals Board shall be final.

(d) If no appeal is filed within thirty days of the date of entry of the original decision, such decision shall stand as the final decision of the Commission.

(e) Appeals under this section may be based upon the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

- (i) Severity rating;
- (ii) Salient factor score;
- (iii) Time in custody;

(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

(f) Upon the written request of the Attorney General seeking review of a decision of a Regional Commissioner, which is received within 30 days of such decision, the National Appeals Board shall reaffirm, modify, or reverse the Regional Commissioner's decision within 60 days of receipt of the Attorney General's request. The National Appeals Board shall inform the Attorney General and the prisoner to whom the decision applies in writing of its decision and the reasons therefor. In the event the Attorney General sub-

mits new and significant information that has not previously been disclosed to the prisoner prior to a hearing under these rules, the National Appeals Board shall act within 60 days to reaffirm, modify or reverse the Regional Commissioner's decision, but shall also remand the case for a new hearing if its decision is adverse to the prisoner. The prisoner shall have disclosure of the new information, and the opportunity to dispute that information under §2.19(c) of this part. Following the hearing, the case shall be returned to the National Appeals Board, together with a recommendation from the hearing examiner, to render a final Commission decision as to the disposition of the case.

[49 FR 44098, Nov. 2, 1984, as amended at 51 FR 32785, Sept. 16, 1986; 59 FR 40258, Aug. 8, 1994; 61 FR 55743, Oct. 29, 1996]

§2.27 Petition for reconsideration of original jurisdiction decisions.

(a) A petition for reconsideration may be filed with the Commission in cases decided under the procedure specified in §2.17 within thirty days of the date of such decision. A form is provided for this purpose. A petition for reconsideration will be reviewed at the next regularly scheduled meeting of the Commission provided the petition is received thirty days in advance of such meeting. Petitions received by the Commission less than thirty days in advance of a regularly scheduled meeting will be reviewed at the next regularly scheduled meeting. The concurrence of two Commissioners shall be required to modify or reverse the decision for which reconsideration is sought. If such concurrence is not obtained, the previous decision shall stand. A decision under this rule shall be final.

(b) Attorneys, relatives, and other interested parties who wish to submit written information concerning a petition for reconsideration should send such information to the National Appeals Board, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Petitions and all supporting material are to be submitted thirty days in advance of the meeting at which such petitions will be considered.

(c) If no petition for reconsideration is filed within 30 days of the entry of a decision under § 2.17, that decision shall stand as the final decision of the Commission.

[61 FR 13763, Mar. 28, 1996, as amended at 61 FR 55743, Oct. 29, 1996]

§ 2.28 Reopening of cases.

(a) *Favorable information.* Notwithstanding the appeal procedures of § 2.26, the appropriate Regional Commissioner may, on his own motion, reopen a case at any time upon the receipt of new information of substantial significance favorable to the prisoner. The Regional Commissioner may then order a new institutional hearing on the next docket, or reverse or modify the decision. The following actions require the concurrence of two out of three Commissioners:

(1) Any modification resulting in a reduction of more than 180 days (other than a modification that brings a decision from above the appropriate guideline range closer to, or to, the nearer limit of the appropriate guideline range);

(2) Any modification resulting in a decision below the appropriate guideline range;

(3) Reversal of a decision (i.e., any modification of a fifteen-year reconsideration hearing decision to a presumptive or effective parole date). Decisions requiring a second or additional vote shall be referred to the National Commissioners under the procedures of 28 CFR 2.24(a). Original jurisdiction cases may be reopened upon the motion of the appropriate Regional Commissioner under the procedures of § 2.17.

(b) *Institutional misconduct.* Consideration of disciplinary infractions and allegations of new criminal conduct occurring after the setting of a parole date are subject to the provisions of § 2.14 (in the case of a prisoner with a presumptive date) and § 2.34 (in the case of a prisoner with an effective date of parole).

(c) *Additional sentences.* If a prisoner receives an additional concurrent or consecutive federal sentence following his initial parole consideration, the Regional Commissioner shall reopen his case for a new initial hearing on the next regularly scheduled docket to con-

sider the additional sentence and re-evaluate the case. Such action shall void the previous presumptive or effective release date. However, a new initial hearing is not mandatory where the Commission has previously evaluated the new criminal behavior, which led to the additional federal sentence, at a rescission hearing under 28 CFR 2.34; except where the new sentence extends the mandatory release date for a prisoner previously continued to the expiration of his sentence.

(d) *Conviction after revocation.* Upon receipt of information subsequent to the revocation hearing that a prisoner whose parole has been revoked has sustained a new conviction for conduct while on parole, the Regional Commissioner may reopen the case pursuant to § 2.52(c)(2) for a special reconsideration hearing on the next regularly scheduled docket to consider forfeiture of time spent on parole and such further action as may be appropriate. The entry of a new order shall void any presumptive or effective release date previously established.

(e) *Release planning.* When an effective date of parole has been set by the Commission, release on that date shall be conditioned upon the completion of a satisfactory plan for parole supervision. The appropriate Regional Commissioner may on his own motion reconsider any case prior to release and may reopen and advance or retard an effective parole date for purposes of release planning. Retardation without a hearing may not exceed 120 days.

(f) *New adverse information.* Upon receipt of new and significant adverse information that is not covered by paragraphs (a) through (e) of this section, a Commissioner may refer the case to the National Commissioners with his recommendation and vote to schedule the case for a special reconsideration hearing. Such referral shall automatically retard the prisoner's scheduled release date until a final decision is reached in the case. The decision to schedule a case for a special reconsideration hearing shall be based on the concurrence of two Commissioner votes, including the vote of the referring Commissioner. The hearing shall be conducted in accordance with the procedures set forth in §§ 2.12 and 2.13.

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The entry of a new order following such hearing shall void the previously established release date.

[44 FR 3406, Jan. 16, 1979, as amended at 46 FR 36138, July 14, 1981; 49 FR 44098, Nov. 2, 1984; 61 FR 55743, Oct. 29, 1996]

§ 2.29 Release on parole.

(a) A grant of parole shall not be deemed to be operative until a certificate of parole has been delivered to the prisoner.

(b) An effective date of parole shall not be set for a date more than nine months from the date of the hearing. Residence in a Community Treatment Center as part of a parole release plan generally shall not exceed one hundred and twenty days.

(c) When an effective date of parole falls on a Saturday, Sunday, or legal holiday, the Warden of the appropriate institution shall be authorized to release the prisoner on the first working day preceding such date.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3407, Jan. 16, 1979; 60 FR 51350, Oct. 2, 1995]

§ 2.30 False information or new criminal conduct: Discovery after release.

If evidence comes to the attention of the Commission after a prisoner's release that such prisoner has willfully provided false information or misrepresented information deemed significant to his application for parole or has engaged in any criminal conduct during the current sentence prior to the delivery of the parole certificate, the Regional Commissioner may reopen the case pursuant to the procedures of § 2.28(f) and order the prisoner summoned or retaken for hearing pursuant to the procedures of §§ 2.49 and 2.50, as applicable, to determine whether the order of parole should be cancelled.

[47 FR 36635, Aug. 23, 1982]

§ 2.31 Parole to detainees: Statement of policy.

(a) Where a detainee is lodged against a prisoner, the Commission may grant parole if the prisoner in other respects meets the criteria set forth in § 2.18. The presence of a detainee is not in

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itself a valid reason for the denial of parole.

(b) The Commission will cooperate in working out arrangements for concurrent supervision with other jurisdictions where it is feasible and where release on parole appears to be justified.

§ 2.32 Parole to local or immigration detainees.

(a) When a State or local detainee is outstanding against a prisoner whom the Commission wishes to parole, the Commission may order either of the following:

(1) Parole to the actual physical custody of the detaining authorities only. In this event, release is not to be effected except to the detainee. When such a detainee is withdrawn, the prisoner is not to be released unless and until the Commission makes a new order of parole.

(2) Parole to the actual physical custody of the detaining authorities or an approved plan. In this event, release is to be effected to the community if detaining officials withdraw the detainee or make no effort to assume custody of the prisoner, providing there is an acceptable plan for community supervision.

(b) When the Commission wishes to parole a prisoner subject to a detainee filed by Federal immigration officials, the Commission shall order the following: Parole to the actual physical custody of the immigration authorities or an approved plan. In this event, release is to be effected regardless of whether immigration officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(c) As used in this section "parole to a detainee" means release to the "physical custody" of the authorities who have lodged the detainee. Temporary detention in a jail in the county where the institution of confinement is located does not constitute release on parole to such detainee. If the authorities who lodged the detainee do not take the prisoner into custody for any

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reason, he shall be returned to the institution to await further order of the Commission.

[43 FR 38822, Aug. 31, 1978, as amended at 44 FR 3409, Jan. 16, 1979; 44 FR 31637, June 1, 1979; 44 FR 34494, June 15, 1979; 47 FR 36635, Aug. 23, 1982]

§ 2.33 Release plans.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Commissioner. In general, the following factors are considered as elements in the prisoner's release plan:

(1) Availability of legitimate employment and an approved residence for the prospective parolee; and

(2) Availability of necessary aftercare for a parolee who is ill or who requires special care.

(b) Generally, parolees will be released only to the place of their legal residence unless the Commission is satisfied that another place of residence will serve the public interest more effectively or will improve the probability of the applicant's readjustment.

(c) Where the circumstances warrant, the Commission on its own motion, or upon recommendation of the probation officer, may require that an adviser who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside be available to the releasee. Such advisor shall serve under the direction of and in cooperation with the probation officer to whom the parolee is assigned.

(d) When the prisoner has an unsatisfied fine or restitution order, a reasonable plan for payment [or performance of services, if so ordered by the court] shall, where feasible, be included in the parole release plan.

[42 FR 39809, Aug. 5, 1977; 42 FR 44234, Sept. 2, 1977, as amended at 50 FR 36422, Sept. 6, 1985]

§ 2.34 Rescission of parole.

(a) When an effective date of parole has been set by the Commission, release on that date is conditioned upon continued satisfactory conduct by the prisoner. If a prisoner granted such a date has been found in violation of institution rules by a disciplinary hearing officer or is alleged to have committed a new criminal act at any time

prior to the delivery of the certificate of parole, the Regional Commissioner shall be advised promptly of such information. The prisoner shall not be released until the institution has been notified that no change has been made in the Commission's order to parole. Following receipt of such information, the Regional Commissioner may reopen the case and retard the parole date for up to 90 days without a hearing, or schedule a rescission hearing under this section on the next available docket at the institution or on the first docket following return to a federal institution from a Community Treatment Center or a state or local halfway house.

(b) Upon the ordering of a rescission hearing under this section, the prisoner shall be afforded written notice specifying the information to be considered at the hearing. The notice shall further state that the purpose of the hearing will be to decide whether rescission of the parole date is warranted based on the charges listed on the notice, and shall advise the prisoner of the procedural rights described below.

(c) A hearing before a disciplinary hearing officer resulting in a finding that the prisoner has committed a violation of disciplinary rules may be relied upon by the Commission as conclusive evidence of institutional misconduct. However, the prisoner will be afforded an opportunity to explain any mitigating circumstances, and to present documentary evidence in mitigation of the misconduct at the rescission hearing.

(d) In the case of allegations of new criminal conduct committed prior to delivery of the parole certificate, the Commission may consider documentary evidence and/or written testimony presented by the prisoner, arresting authorities, or other persons.

(e) The prisoner may be represented at a rescission hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement following the discussion of the charges with the prisoner, and to provide such additional information as the examiner panel may require. However, the presiding hearing examiner may limit or exclude any irrelevant or repetitious statement.

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(f) The evidence upon which the rescission hearing is to be conducted shall be disclosed to the prisoner upon request, subject to the exemptions set forth at § 2.55. If the parole grant is rescinded, the Commission shall furnish to the prisoner a written statement of its findings and the evidence relied upon.

[44 FR 3406, Jan. 16, 1979, as amended at 45 FR 59871, Sept. 11, 1980; 47 FR 2313, Jan. 15, 1982; 54 FR 15173, Apr. 17, 1989]

§ 2.35 Mandatory release in the absence of parole.

(a) A prisoner shall be mandatorily released by operation of law at the end of the sentence imposed by the court less such good time deductions as he may have earned through his behavior and efforts at the institution of confinement. If released pursuant to 18 U.S.C. 4164, such prisoner shall be released, as if on parole, under supervision until the expiration of the maximum term or terms for which he was sentenced less 180 days. If released pursuant to 18 U.S.C. 4205(f), such prisoner shall remain under supervision until the expiration of the maximum term or terms for which he was sentenced. Insofar as possible, release plans shall be completed before the release of any such prisoner.

(b) It is the Commission's interpretation of the statutory scheme for parole and good time that the only function of good time credits is to determine the point in a prisoner's sentence when, in the absence of parole, the prisoner is to be conditionally released on supervision, as described in subsection (a). Once an offender is conditionally released from imprisonment, either by parole or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the offender may be required to serve for violation of parole or mandatory release.

(c) A prisoner committed under the Youth Corrections Act must be initially released conditionally under supervision not later than two years be-

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fore the expiration of the term imposed by the court.

[42 FR 39809, Aug. 5, 1977, as amended at 50 FR 46283, Nov. 7, 1985]

§ 2.36 Rescission guidelines.

(a) The following guidelines shall apply to the sanctioning of disciplinary infractions or new criminal behavior committed by a prisoner subsequent to the commencement of his sentence and prior to his release on parole. These guidelines specify the customary time to be served for such behavior which shall be added to the time required by the original presumptive or effective date. Credit shall be given towards service of these guidelines for any time spent in custody on a new offense that has not been credited towards service of the original presumptive or effective date. If a new concurrent or consecutive sentence is imposed for such behavior, these guidelines shall also be applied at the initial hearing on such term.

(1) Administrative rule infraction(s) (including alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0-60 days per instance of misconduct, or by 0-8 months in the case of use or simple possession of illicit drugs or refusal to provide a urine sample. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

(2) *Escape/new criminal behavior in a prison facility* (including a Community Treatment Center). The time required pursuant to the guidelines set forth in paragraphs (a)(2) (i) and (ii) of this section shall be added to the time required by the original presumptive or effective date.

(i) *Escape or attempted escape*—(A) Escape or attempted escape, except as listed below—8-16 months.

(B) If from non-secure custody with voluntary return in 6 days or less—≤ 6 months.

(C) If by fear or force applied to person(s), grade under (ii) but not less than Category Five.

NOTES: (1) If other criminal conduct is committed during the escape or during time spent in escape status, then time to be served for the escape/attempted escape shall

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be added to that assessed for the other new criminal conduct.

(2) Time in escape status shall not be credited.

(3) Voluntary return is defined as returning voluntarily to the facility or voluntarily turning one's self in to a law enforcement authority as an escapee (not in connection with an arrest on other charges).

(4) Non-secure custody refers to custody with no significant physical restraint [e.g., walkaway from a work detail outside the security perimeter of an institution; failure to return to any institution from a pass or unescorted furlough; or escape by stealth from an institution with no physical perimeter barrier (usually a camp or community treatment center)].

(ii) *Other new criminal behavior in a prison facility.*

Severity rating in the new criminal behavior (from § 2.20)	Guideline range
Category One	<=8 months.
Category Two	<=10 months.
Category Three	12-16 months.
Category Four	20-26 months.
Category Five	36-48 months.
Category Six	52-64 months.
Category Seven	64-92 months.
Category Eight	120+ months.

NOTE: Grade unlawful possession of a firearm or explosives in a prison facility, other than a community treatment center, as Category Six. Grade unlawful possession of a firearm in a community treatment center as Category Four. Grade unlawful possession of a dangerous weapon other than a firearm or explosives (e.g., a knife) in a prison facility or community treatment center as Category Three.

(3) *New criminal behavior in the community* (e.g., while on pass, furlough, work release, or on escape). In such cases, the guidelines applicable to re-parole violators under § 2.21 shall be applied, using the new offense severity (from § 2.20) and recalculated salient factor score (such score shall be recalculated as if the prisoner had been on parole at the time of the new criminal behavior). The time required pursuant to these guidelines shall be added to the time required by the original presumptive or effective date.

NOTE: Offenses committed in a prison or in a Community Treatment Center that are not limited to the confines of the prison or Community Treatment Center (e.g., mail fraud of a victim outside the prison) are graded as new criminal behavior in the community.

(b) The above are merely guidelines. Where the circumstances warrant, a decision outside the guidelines (above or below) may be rendered provided specific reasons are given. For example, a substantial period of good conduct since the last disciplinary infraction in cases not involving new criminal conduct may be treated as a mitigating circumstance.

[45 FR 59871, Sept. 11, 1980, as amended at 51 FR 32072, Sept. 9, 1986; 52 FR 5763, Feb. 26, 1987; 52 FR 17399, May 8, 1987]

§ 2.37 Disclosure of information concerning parolees; Statement of policy.

(a) Information concerning a parolee under the Commission's supervision may be disclosed to a person or persons who may be exposed to harm through contact with that particular parolee if such disclosure is deemed to be reasonably necessary to give notice that such danger exists.

(b) Information concerning parolees may be released by a Chief U.S. Probation Officer to a law enforcement agency (1) as deemed appropriate for the protection of the public or the enforcement of the conditions of parole or (2) pursuant to a request under 18 U.S.C. 4203(e).

(c) Information deemed to be "public sector" information may be disclosed to third parties without the consent of the file subject. Public sector information encompasses the following:

- (1) Name;
- (2) Register number;
- (3) Offense of conviction;
- (4) Past and current places of incarceration;
- (5) Age;
- (6) Sentence data on the Bureau of Prisons sentence computation record (BP-5);
- (7) Date(s) of parole and parole revocation hearings; and
- (8) The decision(s) rendered by the Commission following a parole or parole revocation proceeding, including the dates of continuances and parole dates. An inmate's designated future place of incarceration is not public information.

[47 FR 13521, Mar. 31, 1982, as amended at 52 FR 33408, Sept. 3, 1987; 63 FR 25772, May 11, 1998]

§ 2.38 Community supervision by U.S. Probation Officers.

(a) Pursuant to sections 3655 and 4203(b)(4) of title 18 of the U.S. Code, U.S. Probation Officers shall provide such parole services as the Commission may request. In conformity with the foregoing, probation officers function as parole officers and provide supervision to persons released by parole or as if on parole (mandatory release) under the Commission's jurisdiction.

(b) A parolee may be transferred to a new district of supervision with the permission of the probation officers of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

[44 FR 3409, Jan. 16, 1979]

§ 2.39 Jurisdiction of the Commission.

(a) Jurisdiction of the Commission over a parolee shall terminate no later than the date of expiration of the maximum term or terms for which he was sentenced, except as provided by § 2.35, § 2.43, or § 2.52.

(b) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

(c) Upon the termination of jurisdiction, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

[42 FR 39809, Aug. 5, 1977, as amended at 48 FR 22919, May 23, 1983]

§ 2.40 Conditions of release.

(a) The following conditions are attached to every grant of parole and are deemed necessary to provide adequate supervision and to protect the public welfare. They are printed on the certificates issued to each parolee and mandatory releasee:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his arrival, he shall report to his parole adviser, if he has one, and to the U.S. Probation Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his parole adviser or his probation

officer or his office, he shall communicate with the U.S. Parole Commission, Chevy Chase, Maryland 20815-7286.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the U.S. Probation Officer to whom he is assigned within three days, he shall report instead to the nearest U.S. Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from the probation officer.

(4) The parolee shall notify his probation officer within two days of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his probation officer between the first and third day of each month, and on the final day of parole. He shall also report to his probation officer, at other times as the probation officer directs, providing complete and truthful information.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall get in touch within two days with his probation officer or office if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency.

(8) The parolee shall work regularly unless excused by his probation officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his probation officer any changes in employment.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer marihuana or narcotic or other habitforming drugs, unless prescribed or advised by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record unless he has permission of his probation officer.

(11) The parolee shall not possess a firearm or other dangerous weapon.

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NOTE: Such permission may not be considered in cases in which the parolee is prohibited from such possession by any federal, state, or local law.

(12) The parolee shall permit confiscation by his Probation Officer of any materials which the Probation Officer believes may constitute contraband in the parolee's possession and which he observes in plain view in the parolee's residence, place of business or occupation, vehicle(s), or on his person. The Commission may also, when a reasonable basis for doing is presented, modify the conditions of parole to require the parolee to permit the U.S. Probation Officer to conduct searches and seizures of concealed contraband on the parolee's person, and in any building, vehicle, or other area under the parolee's control, at such times as the U.S. Probation Officer shall decide.

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, and/or court ordered child support or alimony payment that has been, or may be, imposed, and shall provide such financial information as may be requested, by his Probation Officer, relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee will cooperate with his Probation Officer in establishing an installment payment schedule.

(14) The parolee shall submit to a drug test whenever ordered by his Probation Officer.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release pursuant to this section, on its own motion or on the request of the United States Probation Officer supervising the parolee. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the conditions of release.

(c) The Commission may require a parolee to reside in or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require a parolee, who is an addict, within the meaning of section 4251(a), or a drug dependent person within the meaning of section 2(8) of the Public Health Service Act, as amended, to participate in the community supervision program authorized by section 4255 for all or part of the period of parole.

(e) The Commission may require that a parolee remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices. A condition under this section may be imposed only as an alternative to incarceration.

(f) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(g) The ten-day notice provision of paragraph (b) of this section shall not apply to a modification of the conditions of parole

(1) Following a revocation hearing,

(2) Upon a finding that immediate modification of the conditions of parole is required to prevent harm to the parolee or the public, or

(3) In response to a request by the parolee under paragraph (f) of this section.

(h) A parolee may appeal an order to impose or modify parole conditions under § 2.26 not later than thirty days after the effective date of such conditions.

(i) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of refusal to sign. To be again considered for parole, the prisoner must reapply for parole consideration. With respect to prisoners who are required to be released to supervision through good time reductions (pursuant to 18 U.S.C 4161 and 4164), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the releasee to sign the parole certificate.

(j) Any parolee who absconds from supervision has effectively prevented his sentence from expiring. Therefore, the parolee remains bound by the conditions of his release and violations committed at any time prior to execution of the warrant, whether before or after the original expiration date, may be charged as a basis for revocation, and a warrant may be supplemented at any time.

(k) A parolee or mandatory releasee who is released after December 31, 1988, and who is found by the Commission, after a revocation hearing conducted pursuant to these rules, to have been in possession of a controlled substance while on parole, shall have his or her parole revoked. When considering what action to take with regard to a parolee who fails a drug test, the Commission shall consider appropriate alternatives to revocation pursuant to 18 U.S.C. 4209(a). In no case shall parole be revoked upon the basis of a single, unconfirmed positive drug test that is challenged by the parolee, without other violations having been found to justify such revocation.

(l)(1) The Commission may require a parolee, when there is evidence of prior or current alcohol dependence or abuse, to participate in an alcohol aftercare treatment program. In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment.

(2) The Commission may require a parolee, where there is evidence of prior or current drug dependence or abuse, to participate in a drug treatment program, which shall include at least two periodic tests to determine whether the parolee has reverted to the use of drugs (including alcohol). In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment. A decision by the Commission not to impose this special condition shall constitute good cause for suspension of the drug testing requirements of 18 U.S.C. 4209(a). In the event such condition is imposed prior to an eligible prisoner's release from prison, any grant of parole or reparole shall be contingent upon the prisoner passing

all pre-release drug tests administered by the U.S. Bureau of Prisons.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 84054, Dec. 22, 1980; 46 FR 52354, Oct. 27, 1981; 48 FR 22917, May 23, 1983; 48 FR 23184, May 24, 1983; 49 FR 6717, Feb. 23, 1984; 49 FR 44098, Nov. 2, 1984; 50 FR 28101, July 10, 1985; 50 FR 36422, Sept. 6, 1985; 54 FR 11687, Mar. 21, 1989; 55 FR 862, Jan. 10, 1990; 56 FR 30871, 30873, July 8, 1991; 59 FR 66735, Dec. 28, 1994; 60 FR 5461, Jan. 27, 1995; 60 FR 51349, Oct. 2, 1995]

§ 2.41 Travel approval.

(a) The probation officer may approve travel outside the district without approval of the Commission in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district (except employment at offshore locations), and vacation travel outside the district exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

(c) A special condition imposed by the Regional Commissioner prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, Jan. 16, 1979; 48 FR 9247, Mar. 4, 1983; 57 FR 59916, Dec. 17, 1992]

§ 2.42 Probation officer's reports to Commission.

A supervision report shall be submitted by the responsible probation officer to the Commission for each parolee after the completion of 24 months of continuous supervision and annually thereafter. The probation officer shall submit such additional reports as the Commission may direct.

[51 FR 11017, Apr. 1, 1986]

§ 2.43 Early termination.

(a)(1) Upon its own motion or upon request of the parolee, the Commission may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his maximum sentence.

(2) A committed youth offender sentenced to a term of more than one year may not be granted an early termination of jurisdiction earlier than after one year of continuous supervision on parole. When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A review will also be conducted whenever early termination is recommended by the supervising probation officer.

(c)(1) Five years after release on supervision, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in 18 U.S.C. 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. Such hearing may be conducted by a hearing examiner or other official designated by the Regional Commissioner. In calculating such five-year period, there shall not be included any period of release on parole prior to the most recent release or any period served in confinement on any other sentence.

(2) If supervision is not terminated under paragraph (c)(1) of this section the parolee may request a hearing annually thereafter, and a hearing shall be conducted with respect to termination of supervision not less frequently than biennially.

(3) A parolee may appeal an adverse decision under paragraphs (c)(1) or

(c)(2) of this section pursuant to § 2.26 or § 2.27 as applicable.

(d) The Regional Commissioner in the region of supervision shall have authority to make decisions under this section pursuant to the guidelines set forth below; except that in the case of a parolee classified under the provisions of § 2.17, an affirmative decision to terminate supervision under paragraph (b) of this section, or a decision to terminate or continue supervision under paragraph (c) of this section shall be made pursuant to the provisions of § 2.17.

(e) *Early termination guidelines.* In determining whether to grant early termination from supervision, the Commission shall apply the following guidelines:

(1) Absent case-specific factors to the contrary, termination of supervision shall be considered indicated when:

(i) A parolee originally classified in the very good risk category (pursuant to § 2.20) has completed two continuous years of supervision free from any indication of new criminal behavior or serious parole violation; and

(ii) A parolee originally classified in other than the very good risk category (pursuant to § 2.20) has completed three continuous years of supervision free from any indication of new criminal behavior or serious parole violation.

NOTE: As used in this section, an indication of new criminal behavior includes a new arrest if supported by substantial evidence of guilt, even if no conviction or parole revocation results.

(2) Decisions to continue the parolee under supervision past the period indicated above may be made where case-specific factors justify a conclusion that continued supervision is needed to protect the public welfare. Such case-specific factors may relate to the current behavior of the parolee (for example, a parolee whose behavior begins to deteriorate as the normally expected time for termination approaches) or to the parolee's background (for example, a parolee with a history of repetitive assaultive conduct or substantial involvement in large scale or organized criminal activity). In such cases, an additional period of supervision prior to termination of jurisdiction may be warranted.

(3) Decisions to terminate supervision prior to completion of the three year period specified in paragraph (e)(1)(ii) of this section may be made where it appears that the parolee is a better risk than indicated by the salient factor score as originally calculated. However, termination of supervision prior to the completion of two years of difficulty-free supervision will not be granted unless case-specific factors clearly indicate that continued supervision would be counter-productive.

(4) Cases with pending criminal charge(s) shall not be terminated from supervision until disposition of such charge(s) is known.

(5) After five continuous years of supervision, decisions to terminate will be made in accordance with subsection (c) of this rule.

[46 FR 28649, May 28, 1981, as amended at 46 FR 35639, July 10, 1981; 49 FR 44098, Nov. 2, 1984; 50 FR 36424, Sept. 6, 1985]

§ 2.44 Summons to appear or warrant for retaking of parolee.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1) Issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing.

(2) Issue a warrant for the apprehension and return of the offender to custody.

A summons or warrant may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense and awaiting disposition of the charge, issuance of a summons or warrant may be withheld, a warrant may be issued and held in abeyance, or a warrant may be issued and a detainer may be placed.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. 4164, such summons or warrant may be issued only within the maximum term or terms, less one hundred eighty days. A summons or warrant shall be considered issued when signed and either—

(1) Placed in the mail or

(2) Sent by electronic transmission to the intended authorities.

(d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commission's jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to revocation of parole and forfeiture of time pursuant to § 2.52(c).

(e) A summons or warrant issued pursuant to this section shall be accompanied by a statement of the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission. A summons shall specify the time and place the parolee shall appear for a revocation hearing. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 84055, Dec. 22, 1980; 54 FR 11688, Mar. 21, 1989; 63 FR 25771, May 11, 1998]

§ 2.45 Same; youth offenders.

(a) In addition to the issuance of a summons or warrant pursuant to § 2.44 of this part, the Commission or a member thereof, when of the opinion that a youth offender will be benefitted by further treatment in an institution or other facility, may direct his return to custody or issue a warrant for his apprehension and return to custody.

(b) Upon his return to custody, such youth offender shall be scheduled for a revocation hearing.

§ 2.46 Execution of warrant and service of summons.

(a) Any officer of any Federal correctional institution or any Federal officer authorized to serve criminal process within the United States, to whom

a warrant is delivered shall execute such warrant by taking the parolee and returning him to the custody of the Attorney General.

(b) On arrest of the parolee the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the probation officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons. Service shall be made by any Federal officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the appropriate regional office of the Commission.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3409, Jan. 16, 1979]

§ 2.47 Warrant placed as a detainer and dispositional review.

(a) When a parolee is serving a new sentence in a federal, state or local institution, a parole violation warrant may be placed against him as a detainer.

(1) If the prisoner is serving a new sentence in a federal institution, a revocation hearing shall be scheduled within 120 days of notification of placement of the detainer, or as soon thereafter as practicable, provided the prisoner is eligible for and has applied for an initial hearing on the new sentence, or is serving a new sentence of one year or less. In any other case, the detainer shall be reviewed on the record pursuant to paragraph (a)(2) of this section.

(2) If the prisoner is serving a new sentence in a state or local institution,

the violation warrant shall be reviewed by the Regional Commissioner not later than 180 days following notification to the Commission of such placement. The parolee shall receive notice of the pending review, and shall be permitted to submit a written application containing information relative to the disposition of the warrant. He shall also be notified of his right to request counsel under the provisions of § 2.48(b) to assist him in completing this written application.

(b) If the prisoner is serving a new federal sentence, the Regional Commissioner, following a dispositional record review, may:

(1) Pursuant to the general policy of the Commission, let the warrant stand as a detainer and order that the revocation hearing be scheduled to coincide with the initial hearing on the new federal sentence or upon release from the new sentence, whichever comes first;

(2) Withdraw the warrant, and either order reinstatement of the parolee to supervision upon release from confinement or close the case if the expiration date has passed.

(c) If the prisoner is serving a new state or local sentence, the Regional Commissioner, following a dispositional record review may:

(1) Withdraw the detainer and order reinstatement of the parolee to supervision upon release from custody, or close the case if the expiration date has passed.

(2) Order a revocation hearing to be conducted by a hearing examiner or an official designated by the Regional Commissioner at the institution in which the parolee is confined.

(3) Let the detainer stand and order further review at an appropriate time. If the warrant is not withdrawn and no revocation hearing is conducted while the prisoner is in state or local custody, an institutional revocation hearing shall be conducted after the prisoner's return to federal custody.

(d) Revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing

examiner panel, or other official designated by the Regional Commissioner. Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified in § 2.52.

(e)(1) A parole violator whose parole is revoked shall be given credit for all time in federal, state, or local confinement on a new offense for purposes of satisfaction of the reparole guidelines at § 2.20 and § 2.21.

(2) However, it shall be the policy of the Commission that the revoked parolee's original sentence (which due to the new conviction, stopped running upon his last release from federal confinement on parole) again start to run only upon release from the confinement portion of the new sentence or the date of reparole granted pursuant of these rules, whichever comes first. This subsection does not apply to cases where, by law, the running of the original sentence is not interrupted by a new conviction (e.g., YCA; NARA; Mexican or Canadian treaty cases).

(f) If a Regional Commissioner determines that additional information is required in order to make a decision pursuant to paragraph (a)(2) of this section, he may schedule a dispositional hearing at the state or local institution where the parolee is confined to obtain such information. Such hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. The parolee shall have notice of such hearing, be allowed to testify in his behalf, and have opportunity for counsel as provided in § 2.48(b).

[52 FR 17400, May 8, 1987, as amended at 61 FR 33657, June 28, 1996]

§ 2.48 Revocation: Preliminary interview.

(a) *Interviewing officer.* A parolee who is retaken on a warrant issued by a Commissioner shall be given a preliminary interview by an official designated by the Regional Commissioner to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a revocation hearing should be conducted. The official designated to conduct the pre-

liminary interview may be a U.S. Probation Officer in the district where the prisoner is confined, provided he is not the officer who recommended that the warrant be issued.

(b) *Notice and opportunity to postpone interview.* At the beginning of the preliminary interview, the interviewing officer shall ascertain that the Warrant Application has been given to the parolee as required by § 2.46(b), and shall advise the parolee that he may have the preliminary interview postponed in order to obtain representation by an attorney or arrange for the attendance of witnesses. The parolee shall also be advised that if he cannot afford to retain an attorney he may apply to a U.S. District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing pursuant to 18 U.S.C. 3006A. In addition, the parolee may request the Commission to obtain the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the parolee admits a violation or has been convicted of a new offense while on supervision or unless the interviewing officer finds good cause for their non-attendance. Pursuant to § 2.51 a subpoena may issue for the appearance of adverse witnesses or the production of documents.

(c) *Review of the charges.* At the preliminary interview, the interviewing officer shall review the violation charges with the parolee, apprise the parolee of the evidence which has been presented to the Commission, receive the statements of witnesses and documentary evidence on behalf of the parolee, and allow cross-examination of those witnesses in attendance. Disclosure of the evidence presented to the Commission shall be made pursuant to § 2.50(d).

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the Commission a digest of the interview together with his recommended decision.

(1) If the interviewing officer's recommended decision is that no probable cause may be found to believe that the parolee has violated the conditions of his release, the responsible Regional Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible following receipt of the interviewing officer's digest. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that probable cause may be found to believe that the parolee has violated a condition (or conditions) of his release, the responsible Regional Commissioner shall notify the parolee of his final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) Notice to the parolee of any final decision of a Regional Commissioner finding probable cause and ordering a revocation hearing shall state the charges upon which probable cause has been found and the evidence relied upon.

(e) *Release notwithstanding probable cause.* If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceeding may nonetheless be ordered if it is determined that:

(1) Continuation of revocation proceedings is not warranted despite the violations found; or

(2) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and that the parolee is not likely to fail to appear for further proceedings, and that the parolee does not constitute a danger to himself or others.

(f) *Conviction as probable cause.* Conviction of a Federal, State, or local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section and no preliminary interview shall be conducted unless otherwise ordered by the Regional Commissioner.

(g) *Local revocation hearing.* A postponed preliminary interview may be

conducted as a local revocation hearing by an examiner panel or other interviewing officer designated by the Regional Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, 3409, Jan. 16, 1979; 46 FR 42842, Aug. 25, 1981; 47 FR 25735, June 15, 1982]

§ 2.49 Place of revocation hearing.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision; and

(2) The parolee denies that he has violated any condition of his release.

(b) If there are two or more alleged violations, the hearing may be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant or summons as determined by the Regional Commissioner.

(c) A parolee who voluntarily waives his right to a local revocation hearing, or who admits any violation of the conditions of his release, or who is retaken following conviction of a new crime, shall be given a revocation hearing upon his return to a Federal institution. However, the Regional Commissioner may, on his own motion, designate a case for a local revocation hearing.

(d) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the Regional Commissioner under § 2.48(e)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons under § 2.44 shall remain on supervision pending the decision of the Commission.

(e) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon

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which the parolee was retaken. However, if a parolee requests and receives any postponement or consents to a postponed revocation proceeding, or if a parolee by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, 3409, Jan. 16, 1979]

§ 2.50 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) The alleged violator may present witnesses, and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(c) At a local revocation hearing, the Commission may on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocation may be based. Those witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance. Adverse witnesses will not be requested to appear at institutional revocation hearings.

(d) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at or before the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(e) In lieu of an attorney, an alleged violator may be represented at a revocation hearing by a person of his choice. However, the role of such non-

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attorney representative shall be limited to offering a statement on the alleged violator's behalf with regard to reparole or reinstatement to supervision.

(f) A revocation decision may be appealed under the provisions of § 2.26 or § 2.27 as applicable.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, Jan. 16, 1979; 51 FR 32785, Sept. 16, 1986; 52 FR 33409, Sept. 3, 1987]

§ 2.51 Issuance of a subpoena for the appearance of witnesses or production of documents.

(a)(1) Preliminary interview or local revocation hearing: If any person who has given information upon which revocation may be based refuses, upon request by the Commission to appear, the Regional Commissioner may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of the Regional Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, the Regional Commissioner may, upon his own motion or upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Both such subpoenas may also be issued at the discretion of the Regional Commissioner if it is deemed necessary for orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section above may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named

therein shall be made by delivering a copy thereof to such person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. The court may issue an order requiring such person to appear before the Commission, and failure to obey such an order is punishable by contempt.

§ 2.52 Revocation decisions.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence, that the parolee has violated a condition of the parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision including where appropriate:

- (i) Reprimand;
- (ii) Modification of the parolee's conditions of release;
- (iii) Referral to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether reparole is warranted or whether the prisoner should be continued for further review.

(c) A parolee whose release is revoked by the Commission will receive credit on service of his sentence for time spent under supervision, except as provided below:

(1) If the Commission finds that such parolee intentionally refused or failed to respond to any reasonable request, order, summons or warrant of the Commission or any agent thereof, the Commission may order the forfeiture of the time during which the parolee so refused or failed to respond, and such time shall not be credited to service of the sentence.

(2) It is the Commission's interpretation of 18 U.S.C. 4210(b)(2) that, if a parolee has been convicted of a new offense committed subsequent to his release on parole, which is punishable by

any term of imprisonment, detention, or incarceration in any penal facility, forfeiture of time from the date of such release to the date of execution of the warrant is an automatic statutory penalty, and such time shall not be credited to the service of the sentence. An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits the trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.

(d)(1) Notwithstanding the above, prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act shall not be subject to any forfeiture provision, but shall serve uninterrupted sentences from the date of conviction, except as provided in § 2.10 (b) and (c).

(2) The commitment of a juvenile offender under the Federal Juvenile Delinquency Act may not be extended past the offender's twenty-first birthday unless the juvenile has attained his nineteenth birthday at the time of his commitment, in which case his commitment shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.

(e) In determining whether to revoke parole for non-compliance with a condition of fine, restitution, court costs or assessment, and/or court ordered child support or alimony payment, the Parole Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

APPENDIX TO § 2.52—GENERAL
STATEMENT OF POLICY

In the case of any revocation hearing conducted within the Ninth Circuit, the Commission will exercise discretion in determining whether or not to order forfeiture of all or part of the time spent on parole pursuant to 18 U.S.C. 4210(b)(2). The Commission's policy shall be to consider granting credit for time on parole in the case of a parole violator originally classified in the very good risk category (pursuant to 28 CFR 2.20) if the following conditions are met. The conviction must not be for a felony offense. The parole violation behavior (the offense of conviction plus any other violations) must be non-violent, and not involve a repeat of the parole violator's original offense behavior. Further, an adequate period of reimprisonment pursuant to the reparole guidelines at 28 CFR 2.21, and an adequate period of renewed supervision following release from reimprisonment or reinstatement to supervision, must be available without forfeiting street time. In the case of a parole violator originally classified in other than the "very good risk" category, it shall be the Commission's policy to order the forfeiture of all time spent on parole absent extraordinary circumstances. In no instance will the Commission grant credit in the case of a repeat violator on the current sentence.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, 3410, Jan. 16, 1979; 50 FR 36422, Sept. 6, 1985; 53 FR 47187, Nov. 22, 1988; 55 FR 42185, Oct. 18, 1990]

§ 2.53 Mandatory parole.

(a) A prisoner (including a prisoner sentenced under the Narcotic Addict Rehabilitation Act, Federal Juvenile Delinquency Act, or the provisions of 5010(c) of the Youth Corrections Act) serving a term or terms of 5 years or longer shall be released on parole after completion of two-thirds of each consecutive term or terms or after completion of 30 years of each term or terms of more than 45 years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section, the Commission determines that there is a reasonable probability that the prisoner will commit any Federal, State, or local crime or that the prisoner has frequently or seriously violated the rules of the institution in which he is confined. If parole is denied pursuant to this section, such prisoner shall serve until the expiration of his sentence less good time.

(b) When feasible, at least 60 days prior to the scheduled two-thirds date, a review of the record shall be conducted by an examiner panel. If a mandatory parole is ordered following this review, no hearing shall be conducted.

(c) A prisoner released on mandatory parole pursuant to this section shall remain under supervision until the expiration of the full term of his sentence unless the Commission terminates parole supervision pursuant to § 2.43 prior to the full term date of the sentence.

(d) A prisoner whose parole has been revoked and whose parole violator term is 5 years or more shall be eligible for mandatory parole under the provisions of this section upon completion of two-thirds of the violator term and shall be considered for mandatory parole under the same terms as any other eligible prisoner.

[43 FR 38822, Aug. 31, 1978]

§ 2.54 Reviews pursuant to 18 U.S.C. 4215(c).

The Attorney General, within thirty days after entry of a Regional Commissioner's decision, may request in writing that the National Appeals Board review such decision. Within sixty days of the receipt of the request the National Appeals Board shall, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institutional or regional level. The Attorney General and the prisoner affected shall be informed in writing of the decision, and the reasons therefor.

[42 FR 39821, Aug. 5, 1977, as amended at 43 FR 17470, Apr. 25, 1978; 44 FR 3408, Jan. 16, 1979]

§ 2.55 Disclosure of file prior to parole hearing.

(a) *Processing disclosure requests.* At least 60 days prior to a hearing scheduled pursuant to 28 CFR 2.12 or 2.14 each prisoner shall be given notice of his right to request disclosure of the reports and other documents to be used by the Commission in making its determination.

(1) The Commission's file consists mainly of documents provided by the Bureau of Prisons. Therefore, disclosure of documents used by the Commission can normally be accomplished by

disclosure of documents in a prisoner's institutional file. Requests for disclosure of a prisoner's institutional file will be handled under the Bureau of Prison's disclosure regulations. The Bureau of Prisons has 15 days from date of receipt of a disclosure request to respond to that request.

(2) A prisoner may also request disclosure of documents used by the Commission which are contained in the Commission's regional office file but not in the prisoner's institutional file.

(3) Upon the prisoner's request, a representative shall be given access to the presentence investigation report reasonably in advance of the initial hearing, interim hearing, and a 15-year reconsideration hearing, pursuant and subject to the regulations of the U.S. Bureau of Prisons. Disclosure shall not be permitted with respect to confidential material withheld by the sentencing court under Rule 32(c)(3)(A), F.R.Crim.P.

(b) *Scope of disclosure.* The scope of disclosure under this section is limited to reports and other documents to be used by the Commission in making its determination. At statutory interim hearings conducted pursuant to 28 CFR 2.14 the Commission only considers information concerning significant developments or changes in the prisoner's status since the initial hearing or a prior interim hearing. Therefore, prehearing disclosure for interim hearings will be limited to such information.

(c) *Exemption to disclosure (18 U.S.C. 4208(c)).* A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions which, if known to the prisoner, could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information which, if disclosed, might result in harm, physical or otherwise to any person.

(d) *Summarizing nondisclosable documents.* If any document or portion of a document is found by the Commission, the Bureau of Prisons or the originating agency to fall within an exemption to disclosure, the agency shall:

(1) Identify the material to be withheld; and

(2) State the exemption to disclosure under paragraph (c) of this section; and

(3) Provide the prisoner with a summary of the basic content of the material withheld with as much specificity as possible without revealing the nondisclosable information.

(e) *Waiver of disclosure.* When a timely request has been made for disclosure, if any document or summary of a document relevant to the parole determination has not been disclosed 30 days prior to the hearing, the prisoner shall be offered the opportunity to waive disclosure of such document without prejudice to his right to later review the document or a summary of the document. The examiner panel may disclose the document and proceed with the hearing so long as the prisoner waives his right to advance disclosure. If the prisoner chooses not to waive prehearing disclosure, the examiner panel shall continue the hearing to the next docket to permit disclosure. A continuance for disclosure should not be extended beyond the next hearing docket.

(f) *Late received documents.* If a document containing new and significant adverse information is received after a parole hearing but before all review and appellate procedures have been concluded, the prisoner shall be given a rehearing on the next docket. A copy of the document shall be forwarded to the institution for inclusion in the prisoner's institutional file. The Commission shall notify the prisoner of the new hearing and his right to request disclosure of the document pursuant to this section. If a late received document provides favorable information, merely restates already available information or provides insignificant information, the case will not be reopened for disclosure.

(g) *Reopened cases.* Whenever a case is reopened for a new hearing and there is a document the Commission intends to use in making its determination, a copy of the document shall be forwarded for inclusion in the prisoner's institutional file and the prisoner shall be informed of his right to request disclosure of the document pursuant to this section.

[50 FR 40374, Oct. 3, 1985]

§ 2.56 Disclosure of Parole Commission file.

(a) *Procedure.* Copies of disclosable records pertaining to a prisoner or a parolee which are contained in the subject's Parole Commission file may be obtained by that prisoner or parolee upon written request pursuant to this section. Such requests shall be answered as soon as possible in the order of their receipt. Other persons may obtain copies of such documents only upon proof of authorization from the prisoner or parolee concerned or to the extent permissible under the Freedom of Information Act or the Privacy Act of 1974.

(b) *Scope of disclosure.* Disclosure under this section shall extend to Commission documents concerning the prisoner or parolee making the request. Documents which are contained in the regional file and which are prepared by agencies other than the Commission which are also subject to the provisions of the Freedom of Information Act, shall be referred to the appropriate agency for a response pursuant to its regulations, unless the document has previously been prepared for disclosure pursuant to § 2.55, or is fully disclosable on its face, or has been prepared by the Bureau of Prisons. Any Bureau of Prisons documents in a parole file are duplicates of records in the inmate's institutional file. Before referring these documents to the Bureau of Prisons (BOP), the Commission will ask the requestor whether he also wants the BOP documents in his parole file processed.

(1) Requests that are only for a copy of the tape recording of a hearing will be processed ahead of requests seeking multiple documents from the Parole Commission file (priority processing). A requester may limit the scope of the request to a tape recording only (or to a tape recording and/or up to two documents) and thereby qualify for priority processing. For example, a request for the tape recording and the examiner's summary of a hearing qualifies for priority processing.

(2) [Reserved]

(c) *Exemptions to disclosure.* A document or segregable portion thereof may be withheld from disclosure to the extent it contains material exempt

from disclosure under the Freedom of Information Act. 5 U.S.C. 552(b)(1)-(9).

(d) *Specification of documents withheld.* Documents that are withheld pursuant to paragraph (c) of this section shall be identified for the requester together with the applicable exemption for withholding each document or portion thereof. In addition, the requester must be informed of the right to appeal any non-disclosure to the Office of the Chairman.

(e) *Hearing record.* Upon request by the prisoner or parolee concerned, the Commission shall make available a copy of any verbatim record (e.g., tape recording) which it has retained of a hearing, pursuant to 18 U.S.C. 4208(f).

(f) *Costs.* In any case in which billable costs exceed \$14.00 (based upon the provisions and fee schedules as set forth in the Department of Justice regulation 28 CFR 16.10), requesters will be notified that they will be required to reimburse the United States for such costs before copies are released.

(g) *Relation to other provisions.* Disclosure under this section is authorized by 28 CFR 16.85 under which the Parole Commission is exempt from the record disclosure provisions of the Privacy Act of 1974, as well as certain other provisions of the Act pursuant to 5 U.S.C. 552a(j)(2). Requests submitted under the Freedom of Information Act or the Privacy Act for the requester's own records will be processed under this section. In no event will the Commission consider satisfaction of a request under this section, the Freedom of Information Act, or the Privacy Act of 1974, to be a prerequisite to an adequate parole hearing under 18 U.S.C. 4208 (for which disclosure is exclusively governed by § 2.55 of this part) or to the exercise of a parole applicant's appeal rights under 18 U.S.C. 4215. Provisions of the Freedom of Information Act not specifically addressed by these regulations (including the reading room) are covered by 28 CFR, part 16, subpart A.

(h) *Appeals—(1) Appeals to the Chairman.* When a request for access to Parole Commission records or a waiver of fees has been denied in whole or in part, or when the Commission fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the

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request to the Chairman of the Commission within thirty days from the date of the notice denying the request. An appeal to the Chairman shall be made in writing and addressed to the Office of the Chairman, U.S. Parole Commission, 5550 Friendship Boulevard, Suite 420, Chevy Chase, Maryland 20815.

(2) *Decision on appeal.* A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including each FOIA exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the U.S. district court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or in the District of Columbia. If the denial of a request is reversed on appeal to the Chairman, the requester shall be so notified and the request shall be processed promptly by Commission staff in accordance with the Chairman's decision on appeal.

(i) Expedited processing of Requests.

(1) The Commission will provide expedited processing of a request when a requester has demonstrated a compelling need as defined in this section and has presented a statement certified by such person to be true and correct to the best of such person's knowledge and belief. A requester may demonstrate "compelling need" by establishing one of the following:

(i) That failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged federal government activity.

(2) A determination as to whether to provide expedited processing shall be made within ten days after the date of the request. However, the fact of lawful imprisonment in a correctional facility or revocation of parole shall not be deemed to pose an imminent threat to the life or physical safety of an individual. The Commission shall process as

soon as practicable any request for records to which it has granted expedited processing. An administrative appeal of a denial of expedited processing may be made to the Chairman of the Commission within thirty days from the date of notice denying expedited processing.

[50 FR 40375, Oct. 3, 1985, as amended at 52 FR 47921, Dec. 17, 1987; 53 FR 24933, July 1, 1988; 53 FR 47187, Nov. 22, 1988; 54 FR 27839, June 30, 1989; 58 FR 51780, Oct. 5, 1993; 62 FR 51602, Oct. 2, 1997]

§ 2.57 Special parole terms.

(a) The Drug Abuse Prevention and Control Act, 21 U.S.C. sections 801 to 966, provides that, on conviction of certain offenses, mandatory "special parole terms" must be imposed by the court as part of the sentence. This term is an additional period of supervision which commences upon completion of any period on parole or mandatory release supervision from the regular sentence; or if the prisoner is released without supervision, commences upon such release.

(b) At the time of release under the regular sentence, whether under full term expiration or under a mandatory release certificate or a parole certificate, a separate Special Parole Term certificate will be issued to the prisoner by the Bureau of Prisons.

(c) Should a parolee be found to have violated conditions of release during supervision under his regular sentence, i.e., before commencement of the Special Parole Term, he may be returned as a violator under his regular sentence; the Special Parole Term will follow unaffected, as in paragraph (a) of this section. Should a parolee violate conditions of release during the Special Parole Term he will be subject to revocation on the Special Parole Term as provided in § 2.52, and subject to re-parole or mandatory release under the Special Parole Term. Notwithstanding the provisions of § 2.52(c), a special parole term violator whose parole is revoked shall receive no credit for time spent on parole pursuant to 21 U.S.C. 841(c).

(d) If a prisoner is re-paroled under the revoked Special Parole Term a certificate of parole to Special Parole Term is issued by the Commission. If

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the prisoner is mandatorily released under the revoked “special parole term” a certificate of mandatory release to Special Parole Term will be issued by the Bureau of Prisons.

(e) If regular parole or mandatory release supervision is terminated under § 2.43, the Special Parole Term commences to run at that point in time. Early termination from supervision from a Special Parole Term may occur as in the case of a regular parole term, except that the time periods considered shall commence from the beginning of the Special Parole Term.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3410, Jan. 16, 1979. Redesignated at 44 FR 26551, May 4, 1979, as amended at 54 FR 11689, Mar. 21, 1989]

§ 2.58 Prior orders.

Any order of the United States Board of Parole entered prior to May 14, 1976, including, but not limited to, orders granting, denying, rescinding or revoking parole or mandatory release, shall be a valid order of the United States Parole Commission according to the terms stated in the order.

[42 FR 39809, Aug. 5, 1977. Redesignated at 44 FR 26551, May 4, 1979]

§ 2.59 Designation of a Commissioner to act as a hearing examiner.

The Chairman may designate a Commissioner, with the Commissioner’s consent, to serve as a hearing examiner on specified hearing dockets. The Commissioner who serves as a hearing examiner may not vote in the same proceeding as a Commissioner.

[60 FR 40094, Aug. 7, 1995]

§ 2.60 Superior program achievement.

(a) Prisoners who demonstrate superior program achievement (in addition to a good conduct record) may be considered for a limited advancement of the presumptive date previously set according to the schedule below. Such reduction will normally be considered at an interim hearing or pre-release review. It is to be stressed that a clear conduct record is expected; this reduction applies only to cases with documented sustained superior program achievement over a period of 9 months or more in custody.

(b) Superior program achievement may be demonstrated in areas such as educational, vocational, industry, or counselling programs, and is to be considered in light of the specifics of each case. A report from the Bureau of Prisons based upon successful completion of a residential substance abuse program of at least 500 hours will be given prompt review by the Commission for a possible advancement under this section.

(c) Upon a finding of superior program achievement, a previously set presumptive date may be advanced. The normal maximum advancement permissible for superior program achievement during the prisoner’s entire term shall be as set forth in the following schedule. It is the intent of the Commission that this maximum be exceeded only in the most clearly exceptional cases.

(d) Partial advancements may be given (for example, a case with superior program achievement during only part of the term or a case with both superior program achievement and minor disciplinary infraction(s)). Advancements may be given at different times; however, the limits set forth in the following schedule shall apply to the total combined advancement.

(e) Schedule of Permissible Reductions for Superior Program Achievement.

Total months required by original presumptive date	Permissible reduction
14 months or less	Not applicable.
15 to 22 months	Up to 1 month.
23 to 30 months	Up to 2 months.
31 to 36 months	Up to 3 months.
37 to 42 months	Up to 4 months.
43 to 48 months	Up to 5 months.
49 to 54 months	Up to 6 months.
55 to 60 months	Up to 7 months.
61 to 66 months	Up to 8 months.
67 to 72 months	Up to 9 months.
73 to 78 months	Up to 10 months.
79 to 84 months	Up to 11 months.
85 to 90 months	Up to 12 months.
91 plus months	Up to 13 months. ¹

¹ Plus up to 1 additional month for each 6 months or fraction thereof, by which the original date exceeds 96 months.

(f) For cases originally continued to expiration, the statutory good time date (calculated under 18 U.S.C. 4161) will be used for computing the maximum reduction permissible and as the base from which the reduction is to be

subtracted for prisoners serving sentences of less than five years. For prisoners serving sentences of five or more, the two-thirds date (calculated pursuant to 18 U.S.C. 4206(d)) will be used for these purposes. If the prisoner's presumptive release date has been further reduced by extra good time (18 U.S.C. 4162) and such reduction equals or exceeds the reduction applicable for superior program achievement, the Commission will not give an additional reduction for superior program achievement.

[44 FR 55004, Sept. 24, 1979; 44 FR 59527, Oct. 16, 1979, as amended at 49 FR 26580, June 28, 1984; 61 FR 4351, Feb. 6, 1996]

§ 2.61 Qualifications of representatives.

(a) A prisoner or parolee may select any person to appear as his or her representative in any proceeding, and any representative will be deemed qualified unless specifically disqualified under paragraph (b) or (c) of this section. However, an examiner or examiner panel may bar an otherwise qualified representative from participating in a particular hearing, provided good cause for such action is found and stated in the record (e.g., willfully disruptive conduct during the hearing by repeated interruption or use of abusive language). In certain situations, good cause may be found in advance of the hearing (e.g., that the proposed representative is a prisoner in disciplinary segregation whose presence at the hearing would pose a risk to security, or has a personal interest in the case which appears to conflict with that of the parole applicant).

(b) The Commission may disqualify any representative from appearing before it for up to a five-year period if, following a hearing, the Commission finds that the representative has engaged in any conduct which demonstrates a clear lack of personal integrity or fitness to practice before the Commission (including, but not limited to, deliberate or repetitive provision of false information to the Commission, or solicitation of clients on the strength of purported personal influence with U.S. Parole Commissioners or staff).

(c)(1) In addition to the prohibitions contained in 18 U.S.C. 207, no former employee of any Federal criminal justice agency (in either the Executive or Judicial Branch of the Government) with the exception of the Federal Defender Service, shall be qualified to act as a representative for hire in any case before the Commission for one year following termination of Federal employment. However, such persons may be employed by, or perform consulting services for, a private firm or other organization providing representation before the agency, to the extent that such employment or service does not include the performance of any representational act before the Commission.

(2) No prisoner or parolee may serve as a representative before the Commission, at the hire of individual clients, in any case.

[48 FR 14377, Apr. 4, 1983, as amended at 48 FR 44528, Sept. 29, 1983]

§ 2.62 Prisoners transferred pursuant to treaty.

(a) *Applicability, jurisdiction and statutory interpretation.* (1) Prisoners transferred pursuant to treaty (transferees) who committed their offenses on or after November 1, 1987, shall receive a special transferee hearing pursuant to the procedures found in this section and 18 U.S.C. 4106A. Transferees who committed their offenses prior to November 1, 1987, are immediately eligible for parole and shall receive a parole hearing pursuant to procedures found at 28 CFR 2.13. The Parole Commission shall treat the foreign conviction as though it were a lawful conviction in a United States District Court.

(2) The jurisdiction of the Commission to set a release date and periods and conditions of supervised release extends until the transferee is released from prison or the transferee's case is otherwise transferred to a district court pursuant to an order of the Commission.

(3) It is the Commission's interpretation of 18 U.S.C. 4106A that every transferee is entitled to a release date determination by the Commission after considering the applicable sentencing guidelines in effect at the time of the

hearing. Upon release from imprisonment the transferee may be required to serve a period of supervised release pursuant to section 5D1.2 of the sentencing guidelines. The combination of the period of imprisonment that results from the release date set by the Commission and the period of supervised release shall not exceed the full term of the sentence imposed by the foreign court. The combined periods of imprisonment and supervised release may be less than the full term of the sentence imposed by the foreign court unless the applicable treaty is found to require otherwise.

(4) The applicable offense guideline provision is determined by selecting the offense in the U.S. Code that is most similar to the offense for which the transferee was convicted in the foreign court. In so doing, the Commission considers itself required by law and treaty to respect the offense definitions contained in the foreign criminal code under which the prisoner was convicted, as well as the official documents supplied by the foreign court.

(5) The release date that is determined by the Commission under 18 U.S.C. 4106A(b)(1)(A) is a prison release determination and does not represent the imposition of a new sentence for the transferee. However, the release date shall be treated by the Bureau of Prisons as if it were the full term date of a sentence for the purpose of establishing a release date pursuant to 18 U.S.C. 4105(c)(1). The Bureau of Prisons release date shall supersede the release date established by the Parole Commission under 18 U.S.C. 4106A and shall be the date upon which the transferee's period of supervised release commences. If the Commission has ordered "continue to expiration," the 4106A release date is the same as the full term date of the foreign sentence. It is the Commission's interpretation of 18 U.S.C. 4105(c)(1) that the deduction of service credits in either case does not operate to reduce the foreign sentence or otherwise limit the Parole Commission's authority to establish a period of supervised release extending from the date of actual release from prison to the full term date of the foreign sentence.

(6) If the Commission sets a release date under 18 U.S.C. 4106A(b)(1)(A) that is earlier than the mandatory release date established by the Bureau of Prisons under 18 U.S.C. 4105(c)(1), then the release date set by the Commission controls. If the release date set by the Commission under 18 U.S.C. 4106A(b)(1)(A) is equal to or later than the mandatory release date established by the Bureau of Prisons under 18 U.S.C. 4105(c)(1), then the mandatory release date established by the Bureau of Prisons controls.

(7) It is the Commission's interpretation of 18 U.S.C. 4106A that U.S. Code provisions for mandatory minimum terms of imprisonment and supervised release, as well as sentencing guideline provisions implementing such U.S. Code requirements (e.g., section 5G1.1(b) of the sentencing guidelines), were not intended by Congress to be applicable in an 18 U.S.C. 4106A(b)(1)(A) determination. Alternatively, it is the Commission's position that there is good cause in every transfer treaty case for a departure from any statutorily required minimum sentence provision in the sentencing guidelines, including section 5G1.1(b) of the sentencing guidelines, because Congress did not enact mandatory sentence laws with transferees in mind. Thus, in every transfer treaty case, the release date will be determined through an exercise of Commission discretion, according to the sentencing guideline range that is derived from a case-specific "similar offense" determination, rather than by reference to any provision concerning mandatory minimum sentences of imprisonment or terms of supervised release.

(b) *Interview upon entry.* Following the transferee's entry into the United States, the transferee shall, without unnecessary delay, be interviewed by a United States Probation Officer who shall inform the transferee of his rights under this regulation. The transferee shall be given the appropriate forms for appointment of counsel pursuant to 18 U.S.C. 3006(A) at the interview if appointment of counsel is requested.

(c) *Postsentence report.* A postsentence investigation report, which shall include an estimated sentencing classification and sentencing guideline

range, shall be prepared by the probation office in the district of entry (or the transferee's home district). Disclosure of the postsentence report shall be made as soon as the report is completed, by delivery of a copy of the report to the transferee and his or her counsel (if any). Confidential material contained in the postsentence investigation report may be withheld pursuant to the procedures of 18 U.S.C. 4208(c). Copies of all documents provided by the transferring country relating to the transferee shall be appended to the postsentence report when disclosed to the transferee and when transmitted to the Commission.

(d) *Opportunity to object.* The transferee (or counsel) shall have thirty calendar days after disclosure of the postsentence report to transmit any objections to the report he or she may have, in writing, to the Commission with a copy to the probation officer. The Commission shall review the objections and may request that additional information be submitted by the probation officer in the form of an addendum to the postsentence report. Any disputes of fact or disputes concerning application of the sentencing guidelines shall be resolved at the special transferee hearing.

(e) *Special transferee hearing.* A special transferee hearing shall be conducted within 180 days from the transferee's entry into the United States, or as soon as is practicable following completion of the postsentence report along with any corrections or addendum to the report and appointment of counsel for an indigent transferee.

(1) *Waivers.* The transferee may waive the special transferee hearing on a form provided for that purpose, and the Commission may either:

(A) Set a release date that falls within 60 days of receipt of the waiver and establish a period and conditions of supervised release; or

(B) Reject the waiver and schedule a hearing.

(2) *Short-term cases.* In the case of a transferee who has less than six months from the date of his entry into the United States to his release date as calculated by the Bureau of Prisons under 18 U.S.C. 4105, the Commission may, without conducting a hearing or

awaiting a waiver, set a release date and a period and conditions of supervised release. In such cases, the period of supervised release shall not exceed the minimum necessary to satisfy the applicable sentencing guideline (but may extend to the full-term of the foreign sentence if such period is shorter than the minimum of applicable sentencing guideline). The transferee may petition the Commission for a more favorable decision within 60 days of the Commission's determination, and the Commission may act upon the petition regardless of whether or not the transferee has been released from prison.

(f) *Representation.* The transferee shall have the opportunity to be represented by counsel (retained by the transferee or, if financially unable to retain counsel, counsel shall be provided pursuant to 18 U.S.C. 3006(A)), at all stages of the proceeding set forth in this section. The transferee may select a non-lawyer representative as provided in 28 CFR 2.61.

(g) *The decisionmaking criteria.* The Commission shall apply the guidelines promulgated by the United States Sentencing Commission, as though the transferee were convicted in a United States District Court of a statutory offense most nearly similar to the offense of which the transferee was convicted in the foreign court. The Commission shall take into account the offense definition under foreign law, the length of the sentence permitted by that law, and the underlying circumstances of the offense behavior, to establish a guideline range that fairly reflects the seriousness of the offense behavior committed in the foreign country.

(h) *Hearing procedures.* Special transferee hearings shall be conducted by a hearing examiner. Each special transferee hearing shall be recorded by a certified court reporter and the proceedings shall be transcribed if the determination of the Commission is appealed. The following procedures shall apply at a special transferee proceeding, unless waived by the transferee:

(1) The examiner shall inquire whether the transferee and his counsel have had an opportunity to read and discuss the postsentence investigation report and whether the transferee is prepared

to go forward with the hearing. If not, the transferee shall be given the opportunity to continue the hearing.

(2) The transferee shall have an opportunity to present documentary evidence and to testify on his own behalf.

(3) Oral testimony of interested parties may be taken with prior advance permission of the Regional Commissioner.

(4) The transferee and his counsel shall be afforded the opportunity to comment upon the guideline estimate contained in the postsentence investigation report (and the addendum, if any), and to present arguments and information relating to the Commission's final guideline determination and decision.

(5) Disputes of material fact shall be resolved by a preponderance of the evidence, with written recommended findings by the examiner unless the examiner determines, on the record, not to take the controverted matter into account.

(6) The transferee shall be notified of the examiner's recommended findings of fact, and the examiner's recommended determination and reasons therefore, at the conclusion of the hearing. The case shall thereafter be reviewed by the Executive Hearing Examiner pursuant to § 2.23, and the Commission shall make its determination upon a panel recommendation.

(i) *Final decision.* (1) The Commission shall render a decision as soon as practicable and without unnecessary delay. Decisions shall be made upon a concurrence of two votes of the National Commissioners. The decision shall set a release date and a period and conditions of supervised release. If the Commission determines that the appropriate release date under 18 U.S.C. 4106A is the full term date of the foreign sentence, the Commission will order the transferee to "continue to expiration".

(2) Whenever the Bureau of Prisons applies service credits under 18 U.S.C. 4105 to a release date established by the Commission, the release date used by the Bureau of Prisons shall be the date established by the Parole Commission pursuant to the sentencing guidelines and not a date that resulted from any adjustment made to achieve com-

parable punishment with a similarly-situated U.S. Code offender. The application of service credits under 18 U.S.C. 4105 shall supersede any previous release date set by the Commission. The Commission may, for the purpose of facilitating the application of service credits by the Bureau of Prisons, reopen any case on the record to clarify the correct release date to be used, and the period of supervised release to be served.

(3) The Commission may, in its discretion, defer a decision and order a rehearing, provided that a statement of the reason for ordering a rehearing is issued to the transferee and the transferee's counsel (if any).

(4) The Commission's final decision shall be supported by a statement of reasons explaining:

(i) The similar offense selected as the basis for the Commission's decision;

(ii) The basis for the guideline range applied; and

(iii) The reason for making a release determination above or below the guideline range. If the release date is within a guideline range that exceeds twenty-four months, the Commission shall identify the reason for the release date selected.

(j) *Appeal.* The transferee shall be advised of his right to appeal the decision of the Commission to the United States Court of Appeals that has jurisdiction over the district in which the transferee is confined.

(k) *Reopening or modification of a determination prior to transfer of jurisdiction.* (1) A hearing and assistance of counsel will be provided to the transferee whenever a case is reopened under subparagraphs (2), (3), (4), and (5) below unless:

(i) Waived by the transferee; or

(ii) The action to be taken is favorable and no factual issue must be resolved.

(2) The Commission may reopen and modify a determination based upon information which was not previously considered. Such information must, however, be contained in the record of the foreign sentencing court.

(3) The Commission may reopen and modify a determination of the terms and conditions of supervised release. Modifications may include approval or

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disapproval of the transferee's release plan.

(4) The Commission shall reopen and modify a determination that has been found on appeal to have been imposed in violation of the law, to have been imposed as a result of an incorrect application of the sentencing guidelines, or to have been unreasonable.

(5) The Commission may reopen and modify a determination upon consideration of the factors listed in section 5K1.1 of the sentencing guidelines if the transferee provides substantial assistance to law enforcement authorities, and that assistance was not previously considered by the Commission. The Commission will treat a request from a foreign or a domestic law enforcement authority as the equivalent of a "motion of the government."

(6) The Commission may modify a determination based upon a clerical mistake or other error in accordance with Federal Rules of Criminal Procedure Rule 36.

(7) The Commission may reopen and modify the release date if it determines that a circumstance set forth in 18 U.S.C. 3582(c) is satisfied.

(1) *Supervised release.* (1) If a period of supervised release is imposed, the Commission presumes that the recommended conditions of supervised release in section 5B1.4(a) of the sentencing guidelines, a condition requiring the transferee to report to the probation office within 72 hours of release from the custody of the Bureau of Prisons, a condition that the transferee not commit another Federal, state or local crime, and a condition that the transferee not possess a firearm or other dangerous weapon are reasonably necessary in every case. These conditions, therefore, shall be imposed unless the Commission finds otherwise. The Commission may also impose special conditions of supervised release whenever deemed reasonably necessary in an individual case.

(2) If the transferee is released pursuant to a date established by the Bureau of Prisons under 18 U.S.C. 4105(c)(1), then the period of supervised release

commences upon the transferee's release from imprisonment.

[54 FR 27840, June 30, 1989, as amended at 55 FR 39269, Sep. 26, 1990; 58 FR 30705, May 27, 1993; 59 FR 26425, May 20, 1994; 60 FR 18354, Apr. 11, 1995; 61 FR 38570, July 25, 1996; 61 FR 54096, 54097, Oct. 17, 1996; 62 FR 40270, July 28, 1997]

§ 2.63 Rewarding assistance in the prosecution of other offenders; criteria and guidelines.

(a) The Commission may consider as a factor in the parole release decision-making a prisoner's assistance to law enforcement authorities in the prosecution of other offenders.

(1) The assistance must have been an important factor in the investigation and/or prosecution of an offender other than the prisoner. Other significant assistance (e.g., providing information critical to prison security) may also be considered.

(2) The assistance must be reported to the Commission in sufficient detail to permit a full evaluation. However, no promises, express or implied, as to a Parole Commission reward shall be given any weight in evaluating a recommendation for leniency.

(3) The release of the prisoner must not threaten the public safety.

(4) The assistance must not have been adequately rewarded by other official action.

(b) If the assistance meets the above criteria, the Commission may consider providing a reduction of up to one year from the presumptive parole date that the Commission would have deemed warranted had such assistance not occurred. If the prisoner would have been continued to the expiration of sentence, any reduction will be taken from the actual date of the expiration of the sentence. Reductions exceeding the one year limit specified above may be considered only in exceptional circumstances.

[52 FR 44389, Nov. 19, 1987]

§ 2.64 Quorum.

Any Commission action authorized by law may be taken on a majority

vote of the Commissioners holding office at the time the action is taken.

[61 FR 55743, Oct. 29, 1996]

§ 2.65 Youth Corrections Act.

(a) The provisions of this section only apply to offenders serving sentences imposed under former 18 U.S.C. section 5010 (b) and (c).

(b) *Approval of program plans.* (1) The criteria outlined in paragraph (d) of this section (on determining successful response to treatment) shall be considered in determining whether a proposed program plan will effectively reduce the risk to the public welfare presented by the YCA prisoner's release.

(2) If the prisoner's program plan has not already been approved by the Commission, the examiner panel shall be given the plan at a hearing for review and approval. The examiners shall indicate their approval or disapproval of the program plan (with relevant comments and recommendations) in the hearing summary.

(3) If the examiners consider the plan inadequate, they will discuss their concerns with institutional staff. If there is still a disagreement on the plan, the case will be referred by the Commission's regional administrator to the Bureau's regional correctional programs administrator with the recommended changes. Unresolved disputes concerning the adequacy of the program plan shall be decided by the Regional Commissioner and the Regional Director of the Bureau of Prisons. The Regional Commissioner shall render the final decision on approving or disapproving each program plan on behalf of the Commission. Once the program plan has been approved, subsequent approvals are not necessary, unless significant modifications are made by institutional staff.

(c) *Parole hearings and progress reports.* (1) Initial hearings shall be conducted in accordance with §§ 2.12 and 2.13. The examiner panel will discuss with the prisoner and a staff member who is knowledgeable about the case the program plan and the importance of good conduct and program participation in setting the release date.

(2) An interim hearing must be scheduled for an inmate every nine months if the inmate is serving a sentence of

less than seven years. If the inmate is serving a sentence of seven years or more, the interim hearing must be scheduled every twelve months. If the inmate has been continued to the expiration of his sentence, and he has less than twelve months remaining to be served prior to his release or his transfer to a community treatment center, no further hearing is required. In addition, within 60 days of receipt of any special progress report from the warden recommending parole, the prisoner shall be scheduled for a special interim hearing, unless the recommendation can be timely considered at a regularly scheduled interim hearing. An institutional staff member who has personal knowledge of the case shall be present to assist the examiners in their evaluation of the prisoner's conduct, program performance, and response to treatment.

(3) After any interim hearing or review on the record, the Commission may advance the presumptive release date, let the date stand, or retard/rescind the date if the prisoner has committed disciplinary infractions or new criminal conduct.

(4) An interim hearing will not be scheduled after receipt of a progress report, if the Commission decides on the record to parole the prisoner as soon as a release plan is approved (normally within 60 days of the decision).

(5) The institution shall send a progress report to the Commission:

(i) No more than 60 days before each interim hearing;

(ii) Upon determining that a prisoner should be recommended for parole; and

(iii) Before presumptive parole date to allow for the pre-release record review under § 2.14(b).

The warden may forward progress reports to the Commission at other times in his discretion. Progress reports shall also be sent to the Commission every six months for prisoners who have waived interim hearings to enable the Commission to verify that these prisoners have satisfied the conditions of securing their release on an alternative parole date granted under the former YCA compliance plan (*i.e.*, completion of the program plan) or the normal presumptive release date (*i.e.*, obedience to institutional rules).

(6) For prisoners granted earlier parole dates under former compliance plans in *Watts v. Bleaski*: A prisoner may waive interim hearings under this section, in which case he would retain an alternative parole date previously granted to him or a presumptive parole date granted as a result of a finding that the prisoner had responded to treatment. A prisoner who waives an interim hearing under this section may, at any time, re-apply for the hearing and be considered under this section in accordance with the application/waiver provisions at §2.11. The Commission will not review the program plans for prisoners who waive interim hearings pursuant to this paragraph, unless the prisoner subsequently is scheduled for a hearing to consider new criminal conduct or a rule infraction and a modification of the original program plan appears warranted due to the prisoner's new criminal offense or infraction. If the prisoner is scheduled for a hearing that may not be waived (e.g., an interim hearing where there has been a finding of a disciplinary infraction since the last hearing, or any hearing scheduled pursuant to §2.20 (b) through (f), this section will be applied at such hearing.

(7) *Warden's recommendation*. Based on the completion of the program by the prisoner, and the quality of effort demonstrated by the prisoner in completing the plan, the warden will recommend to the Commission a conditional release date for its consideration. This recommendation shall be accompanied by a report on the prisoner's participation and level of achievement in different aspects of his program.

(d) *Criteria for finding successful response to treatment programs*. (1) In determining whether a prisoner has successfully "responded to treatment" the Commission shall examine whether the prisoner has shown that he has received sufficient corrective training, counseling, education, and therapy that the public would not be endangered by his release. See former 18 U.S.C. 5006(f) (definition of "treatment" under the YCA). The Bureau of Prisons shall assist the Commission in this determination by informing the Commission when the prisoner has

completed his program plan and by advising the Commission of the quality of effort demonstrated by the prisoner in completing the plan.

(2) In determining the extent of a prisoner's positive response to treatment, the Commission shall examine the degree by which the prisoner has increased the likelihood that his release would not jeopardize public welfare through his program performance and conduct record. See 18 U.S.C. 4206(a)(2). The starting report for the analysis of a prisoner's response to treatment will be the original parole prognosis reached by the use of the salient factor score, and an evaluation of the nature of the prisoner's prior criminal history and other characteristics of the prisoner. The nature of the current offense may also be considered in determining the risk to the public welfare presented by the prisoner's release. The Commission will then proceed to evaluate whether the prisoner's program participation and institutional conduct has improved the original risk prognosis and evidences an alteration of his valued system, including an understanding of the wrongfulness of his past criminal conduct. For those prisoners who have exhibited serious or violent criminal behavior, the Commission will exercise more caution in making a finding that the prisoner has responded to treatment to the degree that he should be released.

(3) With regard to program performance, significant weight will be given to the following factors in determining a prisoner's response to treatment. This is not intended as an exhaustive list.

(i) *Vocational training*: Where the inmate originally had few job skills, the acquisition of a marketable job skill through vocational training or an apprenticeship program.

(ii) *Education*: Participation in educational programs to acquire an educational level at least the level of a high school graduate.

(iii) *Psychological counseling and therapy*: Where the prisoner's behavior has shown that he may be affected by personality disorders or a mental illness that has hampered his ability to lead a

law-abiding life, or that he may otherwise benefit from such programs, participation in psychological and/or other specialized programs which lead to a judgment by the therapist/counselor that the prisoner has significantly improved his ability to obey the law and favorably modified his value system. Participation in these programs will normally be required for a significant advancement of the presumptive release date for a prisoner who has either committed or attempted a crime of violence.

(iv) *Drug/alcohol abuse programs:* Where the prisoner has a history of drug/alcohol abuse, participation in a drug/alcohol abuse program which leads to the judgment by the therapist/counselor that there is a significant likelihood that the prisoner will not revert to drug/alcohol abuse and has thereby significantly improved his ability to obey the law.

(v) *Work:* Assuming the prisoner is physically and mentally able to do so and is not otherwise engaged in an institutional activity which prevents him from obtaining a job, participation in a job on a regular basis so as to demonstrate a stable life pattern and a favorable modification of his value system.

(4) Prison misconduct (*i.e.*, disobedience to institutional rules, escape) and new criminal conduct in the institution shall be considered in the decision as to whether (or to what degree) a prisoner has successfully responded to treatment. The rescission guidelines of 2.36 shall be used in retarding or rescinding the original presumptive release date set according to the guidelines and the factors described in 18 U.S.C. 4206. If the original presumptive date has been advanced based on response to treatment, the rescission guidelines may also be used to retard or rescind the new date to maintain institutional discipline, if the misconduct is not deemed serious enough to affect the decision that the prisoner has responded to treatment. But misconduct subsequent to the advancement of a release date based on a finding of response to treatment may also result in a reversal of that finding and the cancellation of any advancement of the original presumptive release date.

(e) *Setting the parole date (balancing section 4206 factors with response to treatment).* At any hearing or review on the record, the presumptive release date may be advanced if it is determined that the prisoner has responded to a sufficient degree to his treatment programs. The amount of the advancement should be proportional to the degree of response evidenced by the prisoner. In making the advancement, no rule restricting the amount of the reduction—whether based on the guidelines (§2.20) or the rule on superior program achievement (§2.60)—shall be used. The decision will be the result of a case-by-case evaluation in which response to treatment programs, the seriousness of the offense, and the original parole prognosis are all weighed by the Commission with no one factor capable of excluding all others.

(f) *Parole violators.* Parole violators returned to an institution following a local revocation hearing shall normally be considered for reparole under this section at a hearing within six months of their arrival at the institution.

(g) *Early termination from supervision.* (1) A review of the YCA parolee's file will be conducted at the conclusion of each year of supervision (following receipt of the annual progress report—Form F-3) and six months prior to the expiration of his sentence (after receipt of the final report).

(2) A YCA parolee shall not be continued on supervision beyond the time periods specified in the early termination guidelines (§2.43), unless case-specific factors indicate further supervision is warranted. The guidelines at §2.43 shall not be routinely used to deny early discharge to a YCA parolee who has yet to complete two (or three) years of clean supervision.

(3) The Commission shall consider the facts and circumstances of each YCA parolee's case, focusing on the risk he poses to the public and the benefit he may obtain from further supervision. The nature of the offense and parolee's past criminal record shall be taken into account only to evaluate the risk that the parolee may still pose to the public.

(4) In denying early discharge, the Commission shall inform the probation

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office by letter (with a copy to the YCA parolee) of the reasons for continued supervision. The reasons should pertain, whenever possible, to the facts and circumstances of the YCA parolee's case. If there are no case-specific factors which indicate that discharge should be either granted to denied and further supervision appears warranted, the Commission may inform the YCA parolee that he is continued on supervision because of its experience with similarly situated offenders.

[53 FR 49654, Dec. 9, 1988, as amended at 55 FR 289, Jan. 4, 1990]

§ 2.66 Paroling policy for prisoners serving aggregate U.S. and D.C. Code sentences.

(a) *Applicability.* This regulation applies to all prisoners serving any combination of U.S. and D.C. Code sentences that have been aggregated by the U.S. Bureau of Prisons. Such individuals are considered for parole on the basis of a single parole eligibility and mandatory release date on the aggregate sentence. Pursuant to § 2.5, every decision made by the Commission, including the grant, denial, and revocation of parole, is made on the basis of the aggregate sentence.

(b) *Basic policy.* The Commission shall apply the guidelines at § 2.20 to the prisoner's U.S. Code crimes, and the guidelines of the District of Columbia Board of Parole to the prisoner's D.C. Code crimes.

(c) *Determining the federal guideline range.* The Commission shall first consider the U.S. Code offenses pursuant to the guidelines at § 2.20, and shall determine the appropriate number of months to be served (the prisoner's "federal time"). The Commission shall deem the "federal time" to have commenced with the prisoner's initial commitment on the current aggregate sentence, including jail time.

(d) *Decisions above the federal guideline range.* The "federal time" thus determined may be a decision within, below or above the federal guidelines, but it shall not exceed the limit of the U.S. Code sentence, *i.e.*, the number of months that would be required by the statutory release date if the U.S. Code sentence is less than five years, or the two-thirds date if the U.S. Code sen-

tence is five years or more. The D.C. Code criminal behavior may not be used as an aggravating offense factor, but may be used as predictive basis for exceeding the federal guideline range to account for the actual degree and/or seriousness of risk.

(e) *Scheduling the D.C. parole hearing.* The Commission shall then schedule a D.C. parole hearing to be conducted not later than four months prior to the parole eligibility date, or the expiration of the "federal time," whichever is later. At the D.C. parole hearing the Commission shall apply the point score system of the D.C. Board of Parole, pursuant to the regulations of the D.C. Board of Parole, to determine the prisoner's suitability for release on parole.

(f) *Granting parole.* In determining whether or not to grant parole pursuant to the point score system of the D.C. Board of Parole, and the length of any continuance for a rehearing if parole is denied, the Commission shall presume that the eligible prisoner has satisfied basic accountability for the D.C. Code offense behavior. However, the Commission retains the authority to consider any unusual offense circumstances pursuant to 28 DCMR 204.22 to deny parole despite a favorable point score, and to set a rehearing date beyond the ordinary schedule. The Commission shall also consider whether the totality of the prisoner's offense behaviors (U.S. and D.C. Code) warrants a continuance to reflect the true seriousness or the degree of the risk that the release of the prisoner would pose for the public welfare. Nonetheless, the Commission shall not deny parole or order a continuance, solely on the ground of punishment for the U.S. Code offenses standing alone, or on grounds that have been adequately accounted for in a decision to exceed the federal guideline range.

(g) *Hearings.* The Commission shall, in accordance with § 2.12 of these regulations, conduct an initial hearing to determine the federal time. This portion of the decision shall be subject to appeal pursuant to § 2.26 of these regulations. A D.C. parole hearing to determine the prisoner's suitability for parole under the D.C. guidelines shall be conducted as ordered at the initial

hearing. Prior to the D.C. parole hearing, statutory interim hearings shall be conducted pursuant to § 2.14 of these regulations, including an interim hearing at eligibility on the aggregate sentence if no other interim hearing would be held. After the D.C. parole hearing, rehearings shall be conducted pursuant to the rules and policy guidelines of the D.C. Board of Parole, if release on parole is not granted.

(h) *Revocation decisions.* Violations of parole are violations on the aggregate sentence, and a parole violation warrant is therefore issued under the authority of the aggregate sentence. With regard to the reparole decision, the Commission shall follow the guidelines at § 2.21 of these rules, but rehearings shall be scheduled according to the guidelines of the D.C. Board of Parole.

(i) *Forfeiture of street time.* All time on parole shall be forfeited if required under § 2.52(c) of these regulations. If not, the Commission shall divide the total time on parole (street time) according to the proportional relationship of the D.C. sentence to the U.S. sentence, and shall order the forfeiture of the portion corresponding to the D.C. sentence pursuant to D.C. Code 24-206(a). For example, if the prisoner is serving a two-year D.C. Code sentence and a three-year U.S. Code sentence, the D.C. sentence is two-fifths, or 40 percent, of the total aggregate sentence. If he was on parole 100 days, he therefore forfeits 40 days. "Street time" is measured from the date of release on parole to the execution of the warrant or confinement on other charges.

[54 FR 27842, June 30, 1989, as amended at 57 FR 41395, 41396, Sept. 10, 1992]

§ 2.67 Expedited Revocation Procedure.

(a) In addition to the actions available to the Commission under § 2.47(a) and (b), and under § 2.48, the Commission may offer an alleged parole violator an opportunity to accept responsibility for his violation behavior, to waive a revocation hearing, and to accept the sanction proposed by the Commission in the Notice of Eligibility for Expedited Revocation Procedure that is sent to the alleged parole violator.

(b) The following cases may be considered under the expedited revocation procedure:

(1) Cases in which the alleged parole violator has been given a preliminary interview under § 2.48, and the alleged violation behavior would be graded Category One or Category Two;

(2) Cases in which the alleged violator has been given a preliminary interview under § 2.48 and the proposed decision is continue to expiration of sentence, regardless of offense category; and

(3) Cases in which an alleged violator has received a dispositional review under § 2.47, and the Commission determines that conditional withdrawal of the warrant would be appropriate, but forfeiture of street time is deemed necessary to provide an adequate period of supervision.

(c) The alleged violator's consent shall not be deemed to create an enforceable agreement with respect to any action the Commission is authorized to take by law or regulation, or to limit in any respect the normal statutory consequences of a revocation of parole or mandatory release.

[63 FR 25770, May 11, 1998]

PART 3—GAMBLING DEVICES

Sec.

3.1 Definition.

3.2 Assistant Attorney General, Criminal Division.

3.3 Registration.

3.4 Registration to be made by letter.

3.5 Forfeiture of gambling devices.

AUTHORITY: 89 Stat. 379; 5 U.S.C. 301, sec. 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR, 1949-1953 Comp.

CROSS REFERENCE: For Organization Statement, Federal Bureau of Investigation, see subpart P of part 0 of this chapter.

SOURCE: Order No. 331-65, 30 FR 2316, Feb. 20, 1965, unless otherwise noted.

§ 3.1 Definition.

For the purpose of this part, the term *Act* means the Act of January 2, 1951, 64 Stat. 1134, as amended by the Gambling Devices Act of 1962, 76 Stat. 1075, 15 U.S.C. 1171 *et seq.*